

R E P O R T

FROM THE

SELECT COMMITTEE

ON

CLARE COUNTY WRIT;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

*Ordered, by The House of Commons, to be Printed,
3 April 1879.*

Ordered,—[*Monday, 10th March 1879*]:—THAT a Select Committee be re-appointed to inquire whether Sir Bryan O'Loughlen, Member for the County of Clare, has, since his election, accepted an Office or Place of Profit under or from the Crown, and that they be directed to report their opinion whether he has vacated his Seat by the acceptance of the said Office.

Committee nominated of—

Mr. Secretary Cross.	Mr. William Edward Forster.
Mr. James Lowther.	Sir William Harcourt.
Mr. Attorney General.	Mr. Widdowood.
Mr. Spencer Walpole.	Mr. Sullivan.
Mr. Attorney General for Ireland.	Mr. Adam.
Lord Francis Hervey.	Mr. O'Shaughnessy [added <i>Thursday, 11th March</i>].
Sir William Dyke.	

Ordered, THAT the Committee have power to send for Persons, Papers, and Records.

Ordered, THAT Five be the Quorum of the Committee.

REPORT	- - - - -	p. iii
PROCEEDINGS OF THE COMMITTEE.	- - - - -	p. iv
MINUTES OF EVIDENCE	- - - - -	p. 1
APPENDIX	- - - - -	p. 15

R E P O R T.

THE SELECT COMMITTEE appointed to inquire whether Sir *Bryan O'Loughlen*, Member for the County of *Clare*, has, since his Election, accepted an Office or Place of Profit under or from the Crown, and who were directed to report their opinion whether he has vacated his Seat by the acceptance of the said Office;—HAVE considered the matters to them referred, and have come to the following RESOLUTIONS, which they have agreed to Report to the House:

1. THAT the office of Attorney General of the Colony of Victoria is an office or place of profit under the Crown, within the meaning of the Statutes in that behalf.

2. THAT Sir *Bryan O'Loughlen* has, since his Election for the County of *Clare*, accepted the said office, and has thereby, in the opinion of the Committee, vacated his Seat.

3 April 1879.

PROCEEDINGS OF THE COMMITTEE.

Tuesday, 18th March 1879.

MEMBERS PRESENT:

Mr. Secretary Cross.
Mr. Spencer Walpole.
Mr. Sullivan.
Mr. Whitbread.
Sir William Harcourt.

Mr. Attorney General for Ireland.
Lord Francis Hervey.
Mr. William Edward Forster.
Mr. Adam.
Sir William Hart Dyke.

Mr. SECRETARY CROSS was called to the Chair.

The Committee deliberated.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 24th March 1879.

MEMBERS PRESENT:

Mr. SECRETARY CROSS in the Chair.

Mr. James Lowther.
Mr. Spencer Walpole.
Mr. O'Shaughnessy.
Mr. Attorney General for Ireland.

Mr. Attorney General.
Mr. William Edward Forster.
Lord Francis Hervey.

Mr. *Graham Berry*, Mr. *William Dealtry*, Mr. *John Brawsten*, and Sir *Thomas Erskine May*, K.C.B., were severally examined.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 25th March 1879.

MEMBERS PRESENT:

Mr. SECRETARY CROSS in the Chair.

Mr. Attorney General for Ireland.
Mr. Spencer Walpole.
Mr. O'Shaughnessy.

Mr. Adam.
Mr. James Lowther.

Mr. *John Brawsten* and Mr. *William Dealtry* were further examined.

[Adjourned till Thursday, 3rd April, at Twelve o'clock.

Thursday, 3rd April 1879.

MEMBERS PRESENT:

Mr. SECRETARY CROSS in the Chair.

Mr. Spencer Walpole.
Mr. Attorney General.
Mr. Attorney General for Ireland.

Sir William Harcourt.
Mr. Sullivan.
Mr. James Lowther.

Motion made, and Question, "That the office of Attorney General of the Colony of Victoria is an office or place of profit under the Crown, within the meaning of the Statutes in that behalf"—(*Mr. Attorney General for Ireland*),—put, and agreed to.

Motion made, and Question, "That Sir Bryan O'Leighlen has, since his Election for the County of Clare, accepted the said office, and has thereby, in the opinion of the Committee, vacated his Seat"—(*Mr. Attorney General for Ireland*),—put, and agreed to.

Motion made, and Question, "That the above Resolutions be reported to the House" (*The Chairman*),—put, and agreed to.

Ordered, To Report, together with the Minutes of Evidence and an Appendix.

LIST OF WITNESSES.

Monday, 24th March 1879.

	PAGE
Mr. Graham Berry - - - - -	1
Mr. William Dealtry - - - - -	2
Mr. John Bramston - - - - -	3
Sir Thomas Erskine May, K.C.B. - - - - -	5

Tuesday, 25th March 1879.

Mr. John Bramston - - - - -	10
Mr. William Dealtry - - - - -	13

MINUTES OF EVIDENCE.

Monday, 24th March 1879.

MEMBERS PRESENT:

Mr. Attorney General.
Mr. Attorney General for Ireland.
Mr. Secretary Cross.
Mr. William Edward Forster.

Lord Francis Hervey.
Mr. James Lowther.
Mr. O'Shaughnessy.
Mr. Spencer Walpole.

MR. SECRETARY CROSS, IN THE CHAIR.

MR. GRAHAM BERRY, called in; and Examined.

Chairman.

Chairman—continued.

Mr. Berry.

24 March
1879.

1. YOU are, I believe, Prime Minister of the Colony of Victoria?—Yes.

2. Who was the Governor when Sir Bryan O'Loughlin was appointed Attorney General?—Sir George Bowen.

3. And this Paper, which I have received from the Colonial Office (*handing a Paper to the Witness*), is the appointment of Sir George Bowen?—Yes, this is the draft of instructions on the appointment of Sir George Bowen.

4. I will read the 5th paragraph for the information of the Committee: "And we do further authorise and empower you to constitute and appoint in our name and on our behalf all such judges, commissioners, justices of the peace, and other necessary officers and ministers of our said Colony, as may be lawfully constituted or appointed by us." I also put into your hands a Paper which I have received from the Colonial Office, containing the terms of Sir Bryan O'Loughlin's appointment by the Governor (*handing it to the Witness*)?—I have no doubt that that is perfectly accurate.

5. "To the Honourable Sir Bryan O'Loughlin, Baronet, M.L.A. of the City of Melbourne, in the Colony of Victoria, by the power and authority vested in me in this behalf: I, Sir George Ferguson Bowen, the Governor of the said Colony, relying on your loyalty, integrity, learning, and ability, have constituted and appointed, and by these presents do constitute and appoint you, the said Sir Bryan O'Loughlin, Baronet, to be the Attorney General of the said Colony of Victoria, to have, hold, and enjoy the said office unto you the said Sir Bryan O'Loughlin, Baronet, during pleasure and your residence in the said Colony, and execution of the duties of the said office in person, unless in case of sickness or leave of absence being duly granted to you, together with

all and singular the rights, powers, jurisdictions, and privileges to the said office appertaining, in the most full and ample manner. Given under my hand, and the Seal of the Colony, at Melbourne, in the said Colony, this 27th day of March, in the year of our Lord 1878, and in the 41st year of Her Majesty's reign. G. F. Bowen, Governor of Victoria, Melbourne. By His Excellency's command, *Graham Berry*?"—Yes.

6. On the appointment of the Attorney General under this Commission, had he to resign his seat in the Colonial Legislature?—Yes.

7. And then he was re-elected?—Yes.

8. Under what statute had he to resign his seat?—The 23rd of Victoria, chapter 91 (a Colonial Act): "An Act to limit the number of persons holding offices under the Crown who may sit and vote in the Legislative Council and Assembly of Victoria."

9. Would you read the section applying to this point?—That is the 5th Section: "If any member of the said Council or Assembly of Victoria, either directly or indirectly, become concerned or interested in any bargain or contract entered into by or on behalf of Her Majesty, or shall participate or claim to be entitled to participate, either directly or indirectly, in the profit thereof, or in any benefit or emolument arising from the same, or shall become bankrupt, or apply to take the benefit of any Act now or hereafter to be in force for the relief of insolvent debtors, or shall compound with his creditors, or accept any office or place of profit under the Crown, or shall in any character or capacity, for or in expectation of any fee, gain, or reward, perform any duty or transact any business whatsoever for or on behalf of the Crown, his seat shall thereupon become vacant."

A

10. Would

Mr. Barry.

24 March
1879.

Mr. Attorney General for Ireland.

10. Would you read the 3rd Section also, which specifies the Attorney General as one of the officers liable to retire from office on political grounds?—"Until such appointments as aforesaid shall have been made by the Governor, the persons for the time being holding the offices of Chief Secretary, Attorney General, Treasurer, President of the Board of Land and Works, or Commissioner of Crown Lands and Survey, Vice President of the Board of Land and Works, or Commissioner of Public Works, Commissioner of Trade and Customs, Solicitor General and Postmaster General, shall be capable of sitting and voting in the Legislative Council or Legislative Assembly of Victoria, provided that of the said persons four at least shall be members of the said Council or Assembly."

Chairman.

11. Could you tell the Committee how the Attorney General is paid?—There is a special appropriation which forms part of Schedule D. of the Constitution Act, by which 14,000*l.* a year is set apart for the payment of the responsible Ministers of the Crown. That is varied in its distribution from time to time by the Government of the day sitting in Cabinet, and then it is made an Order of Council, and becomes binding until it is revoked and altered by any subsequent arrangement.

12. And how much of that is paid to the Attorney General?—Speaking from memory, I think 2,000*l.* a year.

13. And has he any fees besides that, or is that the whole of his emolument?—He has certain fees connected with the Patent Office; those are all, I think.

14. And is that sum voted by the Colonial Legislature?—No; it is a special appropriation reserved in the Constitution Act.

15. The sum is reserved specially to Her Majesty?—Yes, a special appropriation in what is generally spoken of as Schedule D., which also

Chairman—continued.

reserved other sums for other purposes to Her Majesty.

16. Is this in the 18th & 19th Victoria, chapter 55, of the Imperial Statutes?—Yes, it forms a Schedule to that Act.

Mr. Foster.

17. I understand you to say that it is upon that part of Section 5 which says, that if any member of the Council or Assembly of Victoria shall accept any office or place of profit under the Crown, thereupon his seat shall become vacant, that you consider that Sir Bryan O'Loughlen vacated his seat in the Assembly?—Yes, certainly.

Mr. Attorney General for Ireland.

18. Is the Attorney General for Victoria appointed without the slightest reference whatever to the Home Government?—Yes.

19. And could he be dismissed by the mere prerogative of the Governor there?—Yes, certainly.

20. And supposing that the Attorney General left the Colony to take his seat in this Parliament, he would *pro facto* vacate his office, because he would cease to reside in the Colony?—Certainly.

21. The terms of his appointment are "during residence in the Colony"?—Yes.

22. So that if Sir Bryan O'Loughlen appeared in this Parliament to take his seat, the mere fact of his appearance would be evidence that he had ceased to hold the office of Attorney General for Victoria?—Yes.

Mr. Leather.

23. When you speak of residence, how would you define "residence"?—We have, for instance, the pleasure of seeing you here to-day, but I presume you have not forfeited your position?—But I have special leave of absence.

24. That brings me to my point; that it is absence without leave which would vacate the seat?—Yes, that would be it.

Mr. WILLIAM DEALTRY, called in; and Examined.

Mr. Dealtry.

Chairman.

25. You come from the Colonial Office?—Yes.

26. What particular office in the Colonial Office do you hold?—I am the principal in charge of the Australian Department.

27. Do you produce to the Committee a copy of the telegraphic correspondence as to the appointment of Sir Bryan O'Loughlen?—Yes; I was told to do more, and bring the correspondence with the Governor. I have brought the Papers in original which have been recently transmitted to the Committee, with the exception of the acknowledgment by Sir Bryan O'Loughlen of the Address of the House of Commons and the Resolution of the Committee of August last; I find that that document was sent to the Speaker of the House of Commons in original on the 2nd of December last.

28. Have you got it there?—I have not got that particular document; I have a copy of it. A copy has been already sent to the Committee.

29. Will you put those Papers in?—Yes (*handing in the same*).

Chairman—continued.

30. Do you also put in the last telegram?—Yes (*handing in the same*).

31. Have you also got a copy of the appointment of Sir George Bowen, the letters patent?—No, I have not brought that; but I believe Mr. Bramston has a copy of it.

32. Have you anything more to produce?—No.

Mr. Spencer Walpole.

33. There was a telegram sent through the Colonial Office to Sir Bryan O'Loughlen, was there not?—No, not direct; it was sent to the Governor instructing him to send home the full text of Sir Bryan O'Loughlen's Commission.

34. Was there no telegram to the Governor or to Sir Bryan O'Loughlen himself informing him of the notice given to him that this Committee was sitting upon the question?—There was a Despatch to the Governor dated the 13th of August.

35. Did Sir Bryan O'Loughlen make any answer to that?—Yes.

36. And

Mr. Spencer Walpole—continued.

36. And in making that answer did he say that he would attend or not attend the Committee?—He did nothing beyond acknowledging the receipt of the Address and of the Report.

Mr. Attorney General for Ireland.

37. There is one question which I should like to ask you on the 46th section of the 18 & 19 Vict. c. 35: I find of Section 46 the marginal note is "Civil List," and the section is, "There shall be payable in every year to Her Majesty, her heirs and successors, out of the consolidated revenue of Victoria, the several sums not exceeding in the whole One hundred and twelve thousand seven hundred and fifty pounds for defraying the expense of the several services and purposes named in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth parts of the Schedule to this Act annexed, marked D, and the said sums shall be issued by the Treasury of Victoria in discharge of such warrants as shall be from time to time directed to him under the hand of the Governor, and the said Treasurer shall account to Her Majesty for the same through the Lord Commissioners of Her Majesty's Treasury, in such manner and form as Her Majesty shall be graciously pleased to direct"; now Schedule D. mentions this Attorney Generalship of Victoria?—Yes.

38. And it is put under the salary of 2,000*l.* a year?—Yes, under Schedule D. of the Constitution Act.

39. Have these accounts been sent over from time to time?—No, I should say not with reference to that section.

40. Would they come to your department?—Yes, if they come at all. A year or two afterwards you might see them in the Estimates, and Appropriations.

41. But supposing this section was carried out, would the accounts be transmitted to the Treasury through you, the Colonial Office?—Yes; but I apprehend that it is not carried out.

42. The meaning of this is that this sum should be accounted for in some way to the Treasury over here?—If so required. But I do not think it has been. I should say that the Legislature of Victoria have power to alter that Act to a certain extent, and very likely they have done so.

43. I find that in a later section, Section 48, "It shall be lawful for the Governor to abolish

Mr. Attorney General for Ireland—continued.

any of the offices named in the third and fourth parts of the said Schedule, or to apply the sums thereby appropriated to such other purposes connected with the administration of the Government of Victoria as to Her Majesty, Her heirs and successors, shall seem fit;" is that the power of alteration that you refer to?—I think they have a power of alteration. It is 25 years since that enactment was made, and they have done a great deal since then. We occasionally send accounts to the Treasury when we get them from Victoria, but it is not considered necessary to do so; we in no way audit them or interfere with them.

Chairman.

44. You will be able to produce more evidence on that point to-morrow, perhaps?—Yes. The pay of the Attorney General differs in different years. Last year it was 1,701*l.* 8*s.* 1*d.*, and the year before it was 1,630*l.* 8*s.* 1*d.*

45. Where do you get these figures from?—I got the first figures from the Agent General for the Colony, and the second I got out of some special votes sent over.

46. Is that besides the 2,000*l.* a year?—No, I do not understand it so.

47. Will you inquire into that before to-morrow?—I will.

Mr. Lawless.

48. You mentioned that these financial statements, as you call them, are sent periodically from the Colony to the Colonial Office?—Yes.

49. As a matter of fact, is that done?—Yes. They come after the close of the year, very likely, but they do not come in a covering despatch, and we do not consider that they call for any special attention or action. We could not interfere in any way with the finances of the Colony.

50. You say that as a matter of fact they do come, but they come irregularly, and sometimes at long intervals?—Yes, I should say so.

51. When you get them, sooner or later, what is done with them?—If we consider them very important we send them to the Treasury.

52. And otherwise put them into the waste paper basket?—I would not go so far as to say that, but they are put aside.

Mr. JOHN BRANSTON, called in; and Examined.

Chairman.

53. You are Assistant Under Secretary of State at the Colonial Office?—I am.

54. Do you produce a copy of the Commission of Sir George Ferguson Bowen?—I do (producing it).

Mr. O'Shaughnessy.

55. Do the Colonial authorities of this Colony notify to you such appointments as of this of the Attorney Generalship?—Undoubtedly, the Governor would always report the formation of a new Ministry.

Chairman.

56. Have you anything more to say about this matter yourself?—I may say that the prepara-

Mr. Destiny.

24 March
1879.

Chairman—continued.

tion of Commissions passes through my hands when they are made, and I am the Under Secretary in charge of the Australian Department.

57. You cannot give us any further information about the salary of the Attorney General?—No.

Mr. Attorney General for Ireland.

58. In "Chambers on Elections," under the heading of "Offices held to vacate seats," there is a long list of offices given, whose names would go to show that they were connected with the colonies, namely, Barbadoes, Virginia, Dominica, Gibraltar, Tobago, Jamaica, Leeward Islands, &c. Nothing whatever is stated there as to the nature, tenure, or mode of appointment to those offices;

Mr. Branston.

Mr.
Brampton.
24 March
1879.

Mr. Attorney General for Ireland—continued.
offices; would there be anything at all in the records of the Colonial Office that you know of, that would tell the Committee how these offices were created, whether they were appointed by the Governors of the day of those Colonies, or whether they were appointed by the Home Government. These are old appointments made, some of them at the end of the last century, and some of them at the beginning of this?—I have no doubt we could find the history of any one appointment as far back as that.

Chairman.

69. Would you be good enough before to-morrow, if you can, just to look at this paragraph in the memorandum drawn up by the Attorney General for Ireland in "Chambers on Elections" (page 421), under the heading of "Offices held to vacate seats." There is a long list comprising offices purporting to be of Barbadoes, Virginia, Dominica, Gibraltar, Tobago, Jamaica, Leeward Islands, &c., but nothing is stated as to their nature, tenure, or mode of appointment. Can you find anything on that point for us?—I could tell you now how the men are appointed in all those Colonies at the present day.

Mr. Attorney General for Ireland.

69. The present day would hardly do, because those that are in Crown Colonies are appointed over here by the Secretary of State?—They are nominated over here by the Secretary of State. The selection of all the principal offices is made here by the Secretary of State, but the actual appointment is done on the spot by the Governor. For instance, supposing a gentleman is sent out as Attorney General to a Colony, his name is selected by the Secretary of State here; the name is then submitted to the Queen, and a warrant is signed by Her Majesty authorising the governor to admit that particular man to the office. On the arrival of that warrant the Governor issues a Commission under his hand and the seal of the Colony.

Mr. Leathes.

61. Is that in the case of a Crown Colony?—Yes.

Mr. Attorney General for Ireland.

62. What the Committee would like to know, in regard to the various cases referred to in that memorandum, is whether in those very cases where it is said that the acceptance of such appointments vacates the seats, they were made in the way you have now described on nomination from home, and on a warrant from the Secretary of State to the Governor, and then completed by the Governor, or whether they were made altogether in this country?—That would depend very much on the nature of the office.

Mr. O'Shaughnessy.

63. Are we to understand that those appointments you now speak of made by the Governors in those Crown Colonies are made on a warrant from the Secretary of State?—A warrant from the Queen.

64. On a recommendation of the Secretary of State?—Selected by the Secretary of State, recommended to Her Majesty; Her Majesty signs

Mr. O'Shaughnessy—continued.

a warrant, and then the Governor issues a Commission under the seal of the Colony, and swears in the officer.

Mr. Attorney General.

65. There is no such warrant in the case of the appointment of the Attorney General for Victoria?—No, except the general authority to the Governor to appoint officers.

66. But no special warrant?—No.

Chairman.

67. And the selection is left entirely to the Governor in that case?—In Victoria to the Governor, who makes it upon the recommendation of the Prime Minister.

Mr. Leathes.

68. I think with regard to that list which the Attorney General for Ireland drew attention to, the Colony of Jamaica, at that time was a self-governing Colony, and had a Legislature, but has since become a Crown Colony?—Yes.

69. Had the others, not counting Jamaica, Legislatures?—I cannot say whether all had, but most of them would have.

70. In other words, they are substantially on all fours with Victoria in a constitutional point of view?—Yes, except that I do not know where to look for the constitution of Virginia.

Mr. Attorney General.

71. Supposing Her Majesty thought proper to dismiss the Attorney General for Victoria, is there anything to prevent her doing so; he holds that office "during pleasure"; during whose pleasure?—I take it, that if it were thought necessary to take such a step, the Queen, through the Secretary of State, would instruct the Governor to revoke the appointment.

Mr. O'Shaughnessy.

72. Do not I rightly understand, that the power of the Governor and of his Council in Victoria to appoint, to suspend, or to remove, is entirely derived from this Commission from the Queen?—No, I think not.

Mr. Attorney General for Ireland.

73. Section 37 of the Victoria Constitution Act states, "The appointment to public offices under the Government of Victoria, hereafter to become vacant or to be created, whether such offices be salaried or not, shall be vested in the Governor, with the advice of the Executive Council, with the exception of the appointments of the officers liable to retire from office on political grounds, which appointments shall be vested in the Governor alone."—Yes.

Mr. Forster.

74. With regard to the list that was read by the Attorney General for Ireland, from "Chambers on Elections," stating that the offices held to vacate seats comprised offices "purporting to be of Barbadoes, Virginia, Dominica, Gibraltar, &c.," as regards these Colonies, at the time this statement was held to apply, Jamaica was a Legislative Colony?—Yes, speaking from memory, it was.

75. And Barbadoes was a Legislative Colony?—Yes.

76. And

Mr. Forster—continued.

76. And Barbadoes is not now a Crown Colony?—No.

77. Are the Leeward Islands a Crown Colony?—Yes, there is a Legislature partly elected and partly nominated.

78. But Barbadoes, so far as constitutional arrangement is concerned, is as much a consti-

Mr. Forster—continued.

tional Colony as Victoria?—It has an elected assembly and a nominated council.

79. As much so, then, as New South Wales?—Yes.

Mr. Lowther.

80. I think New South Wales and Victoria have no nominations at all?—New South Wales has nominations to the Legislative Council.

SIR THOMAS ERSKINE MAY, K.C.B., called in; and Examined.

Chairman.

81. You are, as we all know, Clerk of the House of Commons?—I am.

82. Do you produce the certificate of the return of Sir Bryan O'Loughlin as Member for Clare County?—Yes (*producing the same*). I have the certificate here which, perhaps, I had better read, "Those are to certify that Sir Bryan O'Loughlin, Baronet, is returned a Member to serve in this present Parliament for the County of Clare, as by a certificate delivered into my office this day, and there now remaining of Record, appears. Given under my hand, at the said office, this Seventeenth day of August 1877." (signed) "C Roskill, Clerk of the Crown in Chancery."

83. That is before the date of the appointment of Sir Bryan O'Loughlin as Attorney General for Victoria?—Yes; Sir Bryan O'Loughlin was appointed Attorney General for Victoria on the 27th of March 1878, as appears from a document before the Committee.

84. You have heard the papers read which have been put in; do you wish to say anything with regard to the authority under which his appointment as Attorney General of Victoria was made?—Yes; I am not sure that it appeared quite distinctly, or at all events it may perhaps be repeated, that being one of the responsible Ministers in Victoria, he is appointed by the Governor alone, and not by the Governor with the advice of the Executive Council, as other officers are appointed. I may add, perhaps, that there are only nine officers in Victoria who are allowed to sit in Parliament; those alone being the responsible Ministers of the Governor, for the time being.

85. Are they all appointed by the Governor and Council?—By the Governor alone, according to the terms of the Constitution Act of Victoria of 1854.

86. Have you anything to say as to the form of the appointment itself?—That has been lately read to the Committee; it is in accordance with the terms of the Constitution Act, inasmuch as it says, "By the power and authority vested in me in this behalf, I hereby appoint"; that is, I presume, under the authority derived from his Commission from the Crown, and also under the Constitution Act of Victoria.

87. Under the Commission which we have heard read?—Yes, both under the commission, and under the Constitution Act of Victoria.

88. Do you wish to say anything further than that with regard to the position of the Attorney General as a responsible Minister?—Pursuant to another Act of the Colony of Victoria, the 23rd Victoria, No. 91, he vacated his seat on accepting his appointment as Attorney General of the Colony, and was re-elected, as appears from the papers laid before the Committee last Session.

0.64.

Chairman—continued.

89. Do you wish to say anything as to the distinction between offices from the Crown, and offices under the Crown?—The statutes relating to such offices have been so fully explained in the memorandum laid before the Committee by Mr. Attorney General for Ireland, that I will not refer specifically to the statutes; but I think it is as well that the Committee should have distinctly before them the difference between offices from the Crown, and offices under the Crown, under those statutes. Now with regard to offices from the Crown, I think their nature has been distinctly defined by 41 Geo. 3, c. 52, as offices accepted "immediately and directly from the Crown." Such appointments are granted either by letters patent, by warrant, by commission, or by kissing of hands, or otherwise directly from the Crown.

90. Of course you are aware of the distinction between the old offices and the new offices?—Yes.

91. Have you anything to say on that point?—There is this peculiarity with regard to old offices under the Crown and not from the Crown, that the holders of them do not vacate their seats at all, as is well known, not only according to law, but also according to practice. For example the Under Secretaries of State, the Secretary to the Treasury, and the Secretary to the Admiralty, and other similar appointments, being old offices, do not come under the clauses of the Acts, and the seats of the holders of those offices are not vacated at all; while new offices of a similar tenure wholly disqualify.

92. Have you made any search as to precedents relating to offices in the Colonies?—Yes, I directed a search to be made in the Journals, and I have before me the result of that search (*producing some Papers*); but I apprehend they will generally be inapplicable to the present case. By far the greater number of them were obviously old offices, and were granted directly from the Crown, inasmuch as the Members who accepted the offices vacated their seats, and were returned again for the same places, and continued to sit in Parliament. Hence it is obvious, in the first place, that they were old offices, and granted directly from the Crown; and secondly, that the duties of those offices, if any, were performed in this country, as the holders of them continued to sit in Parliament. Such precedents appear to be scarcely in point, but I can hand them in to the Committee. (*The same were handed in.*)

Mr. Walpole.

93. Those are entirely cases of old offices, in fact, from the Crown?—Nearly all.

A 3

94. Have

Mr.
Brampton.
24 March
1879.

Sir
T. E. May,
K.C.B.

Sir
T. E. May,
B.C.S.,
24 March
1879.

Chairman.

94. Have you anything to say about offices in settlements under the East India Company?—The law was held not to extend to the case of governors of any settlements of the East India Company, so not being under the Crown, although after 1788 the Crown had a concurrent power in the appointment of such governors, and could absolutely recall them. Attention was directed to this anomaly by the case of Mr. Lushington, the Governor of Madras, in 1829; and upon the recommendation of a Committee which inquired into that case, an Act was passed to disqualify governors and deputy governors of the East India Company (10 Geo. 4, c. 62). The Report of that Committee may be of some interest to the Committee.

95. Will you put it in?—Yes. (*The same was handed in.*)

96. Have you anything to say as to the precedent in the case of Mr. Huskisson?—In the case of Mr. Huskisson, as the Committee are aware from the Report that has been printed, the Election Committee came to no decision upon the point of law, as the fact of the appointment failed to be proved. The Governor, who had been recommended by the Secretary of State to appoint Mr. Huskisson, had not replied to that communication, and consequently there was no proof of the actual appointment of Mr. Huskisson to the office. That case, indeed, is really no precedent, as there was no decision on the point of law.

Mr. Walpole.

97. Was not that the case of an agent in this country?—Yes, it was the case of an agent in this country, but appointed by the Governor of Ceylon. The fact of the appointment was not proved, but otherwise that was a case in which the Governor would have appointed upon the recommendation of the Secretary of State. In that respect it obviously differs, very considerably, from the case now under the consideration of the Committee.

Mr. O'Shaughnessy.

98. How does it differ from the present case?—It differs from the present case, in my judgment, to this extent. In the case of Mr. Huskisson, the Secretary of State for War and the Colonies sent out, according to custom, a recommendation of Mr. Huskisson to fill the office; and it was customary for the Governor, in answer to that recommendation, to appoint the person recommended. Now, in the case of the Attorney General of Victoria, no such recommendation is made, nor is the Secretary of State signified, until after the appointment that such an appointment has, in fact, been made. The Governor has an independent power of appointment, under the Constitution Act of Victoria, and a general power of appointment under the Queen's Commission, and Instructions.

Chairman.

99. Do you wish to say anything about offices in the appointment of the governor of a colony?—Yes; the case of Mr. Huskisson naturally leads to that question. In that case, as I have already stated, there was a recommendation from the Government at home, but in the case of Victoria, and of every other colony in which there is responsible government, the Governor himself appoints. Limiting myself, however, to

Chairman—continued.

Victoria alone,—in that colony the Governor appoints by himself and without reference to the Home Government; he appoints those responsible Ministers who represent the majority, for the time being, in the legislature of the colony. Hence the position of a governor of a colony which has responsible government is obviously very different from that of the Governor either of a Crown colony or of a colony having a local legislature, but governed otherwise than under the latest system of responsible government.

100. Therefore, the case of those officers would entirely differ from the case of officers appointed under the Lord Lieutenant of Ireland?—Yes, but so far as any inference is to be ruled from the case of officers under the Lord Lieutenant of Ireland, it may illustrate the position of the governor of a colony.

101. Will you explain to the Committee how it illustrates that position?—In this way: By the 41 Geo. 3, c. 58, s. 5, it was enacted that "no person holding any office or place of profit from or by the nomination or appointment of the Lord Lieutenant, created after the 33rd Geo. 3, c. 41 (1), shall be capable of being elected or of sitting or voting in any future Parliament." This provision shows that in the judgment of Parliament, at that time, new officers under the Lord Lieutenant did not disqualify, according to a due construction of the Irish Act of the 33rd Geo. 3; yet the Lord Lieutenant would seem to be as closely identified with the Crown as a Secretary of State, or any other Minister of the Crown. So far, therefore, as any deduction is to be drawn from the provisions of this statute, it would seem that an office in the appointment of a Governor, having a separate administrative authority, would not disqualify, unless there be some express enactment to that effect.

102. What do you consider the position of the Governor of Victoria, under responsible Government?—The position of the Governor of Victoria is that of a local constitutional sovereign. He has his responsible ministers, who advise him upon all acts of the Executive Government, and of legislation. Those responsible advisers again represent the majority in the local legislature, and he is bound to act according to their advice, or to change them, and to appeal to the country. His position is assuredly one of peculiar administrative independence,—a degree of independence never known in any Colonial Government, until the introduction of the principles of constitutional and responsible government in the Colonies.

103. Looking at the precedents which you have been able to find in the Journals, and having heard the authority given to the Governor of the Colony to appoint, and having read the terms of his appointment, what is your own view of the position of the Attorney General of Victoria with regard to this particular question?—The question which is referred to the Committee is really whether the Attorney General of Victoria has accepted a new office or place of profit under the Crown, according to the true intent and meaning of the English and Irish statutes. It appears to me that the office in question is not held under any of the conditions contemplated by those statutes. The holder is not under the influence of the Crown at home: the independence of Parliament is not concerned in his acceptance of a new office. He cannot be reckoned among the class of officers against whom those statutes were directed,

Chairman—continued.

directed, as being subservient to the Ministers of the Crown. No such office could have been in the contemplation of the Legislature, when those Acts were passed. These are the principal circumstances connected with the office, upon which the Committee will form its own decision.

104. Have you any other observation that you wish to make upon the case in any form or shape?—No.

Mr. Forster.

105. In describing the position of the Governor of Victoria as a local constitutional sovereign, you stated that such a position was unknown until self-government was given to the Colonies?—I think I did not use the word "unknown." I said that it was not in existence to the same extent in an old colony, like Jamaica, for example.

106. That brings me exactly to the question that I wished to ask you; wherein does his position differ from the position which the Governor of Jamaica had in former times; or take the case of Barbadoes now, which for 300 years has had a Parliament of its own?—I apprehend that a much wider discretion is given to the Governor of Victoria than was given under any of the former Constitutions, when Ministers, at home, were still tenacious of their patronage.

107. If it should be proved that officers in Barbadoes vacated seats, you would not consider that that was necessarily a precedent applicable to this office?—Not necessarily; it would depend entirely upon the constitution of the Colony at the time, and the conditions under which offices were granted. Upon that I am not prepared to give any evidence.

108. Your remark as regards such an office not being contemplated by the Act would seem to me to apply quite as much to a man taking office and residing in Barbadoes, as it would to the Attorney General of Victoria?—No, I think not; it is different in this sense: it could not have been foreseen when the Act was passed that the whole law with regard to offices in the Colony of Victoria would be prescribed, as it has been, by local statutes. The Colony of Victoria has passed more than one Act relating to these offices. These offices are equivalent to offices from the Crown, being offices held directly from the Governor. These are the offices of responsible Ministers, the holders of which are entitled to sit in Parliament. There are also the holders of all other offices—equivalent to the new offices in this country—who are excluded from Parliament. There is, in short, a complete Colonial Code with reference to the position of offices in the Colony, which could never have been anticipated by Parliament at the time when these statutes were made relating to the Parliament of England.

Mr. O'Shaughnessy.

109. Does it not strike you that it was because Parliament could not at that time anticipate the various new offices and new positions that might be created that Parliament used the term "new offices"?—There were two reasons for using the words "new offices." One, no doubt, was to discourage the multiplication of offices for purposes of patronage; and another was to exclude all the officers who might, from time to time, be appointed to such offices. But I may observe with reference to the term of "new offices," that so little confidence had Parliament itself in the

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Mr. O'Shaughnessy—continued.

phraseology of these statutes, that with respect to most of the offices which were created by statute, after that time, some express provision was inserted in the statute creating them, again declaring their disqualification. Parliament was not satisfied to rely entirely upon the somewhat indefinite term "new offices."

110. But this particular office was not created by an Act of the Imperial Parliament?—Not at all.

111. Therefore it was not possible for the Imperial Parliament to disqualify from sitting in Parliament a Member holding this office unless a particular Act was passed for the purpose?—So it would appear to me.

112. You have read the Warrant from the Queen ennobling the Governor of Victoria to appoint to these offices?—I heard a paragraph from it read.

113. But you have at some time read it?—Yes.

114. It purports, does it not, to convey from the Sovereign to the Governor the power to appoint to these offices?—Yes, I think that was essential to mark the position of the Governor in relation to the Crown. Whatever constitutional power he may have under the Constitution Act of Victoria, he is, nevertheless, the representative of Her Majesty in the Colony; he exercises Her prerogatives, and acts under Her authority.

115. You have read the Victorian statute?—Yes.

116. Can you say whether it requires to be confirmed by the Queen at all, or whether it obtains its validity the moment it receives the assent of the Governor there?—The Constitution Act certainly received the sanction of the Government at home.

117. Do the Acts passed by the Colonial Parliament require to be approved by the Colonial Office here; at any rate the Constitution Act of the Victorian Parliament was approved by the Queen's representative there?—Yes, and it was approved also by the Colonial Minister at home, and by Her Majesty; and even by the Imperial Parliament itself, with certain amendments.

118. You think that that Victorian Act was both approved of by the Governor in the Colony, and was also approved of explicitly or by implication by the Minister of the Crown at home, and that Act speaks of this office as an "office under the Crown"?—Yes, it certainly does so, whatever may be the construction that the Committee may think proper to put upon it; and every public office throughout the British Empire is an office under the Crown. But with regard to that expression, I should hardly think that the term "under the Crown" used in the colonial statute could be regarded as identical with "new offices under the Crown," comprised in the clauses intended to be dealt with by the statutes of the mother country.

119. Under the Acts passed previously to the one referring to new offices, it was not necessary either before the Act was passed or subsequently that the office should be an office at home?—Not at all.

120. There have been cases where in Crown colonies or in places outside the three kingdoms, the obtaining of offices has disqualified persons from sitting in Parliament?—Clearly; there is no question of that. It has no reference to its being within the United Kingdom; it depends upon the tenure of the office.

121. Therefore,

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Sir
T. E. May,
K.G.B.
24 March
1879.

Sir
T. E. May,
S.G.C.
24 March
1879.

Mr. O'Shaughnessy—continued.

121. Therefore, it is accurate to say that an office under the Crown within the meaning of the Act of George 3, to which we have referred, may be an office held outside the United Kingdom?—Clearly.

122. Does there happen to be any precedent at all for a seat in Parliament being vacated by a Member of Parliament taking an office in Hanover, when the King of England was King of Hanover?—I am not aware of any such case.

Lord Francis Hervey.

123. You expressed an opinion, I think, with reference to the 38th Geo. 3, c. 36?—No, I did not refer to that Act at all.

124. You expressed the opinion that the 41st Geo. 3, c. 52, was not declaratory in its operation, but was intended to enact something fresh?—I did not happen to enter upon that point. What I stated, or intended to convey, was that so far as any deduction was to be drawn from that Act, it would show that in the opinion of Parliament, at that time, an appointment to an office by a governor having an independent administrative authority did not vacate a seat.

125. You do not happen to know, do you, whether at the time of the passing of that Act any persons were holding such offices as the Act contemplates, and whether they found it necessary to get indemnities?—No. I think I may say that there was certainly no indemnity, because that would have been on record. Whether any gentlemen may have refrained from coming into Parliament on that ground, I cannot say.

126. Is it clear with regard to the words in the Victorian Statute that the effect that the office of Attorney General is an office under the Crown, that they would only refer to the Colony of Victoria?—It only applies to an office under the Crown in the Colony of Victoria.

127. It has reference to colonial disqualification?—That is a matter for the Committee to decide.

Mr. Waipole.

128. As a matter of fact, it does operate, does it not, as a disqualification in Victoria, just in the same way as a new office accepted here would be a disqualification?—As a matter of fact, it does operate as a disqualification in Victoria, except in the case of nine specified offices.

129. That is in harmony with your opinion, that what was contemplated by the Act of Anne was an influence exercised upon the Parliament at home by a new office given to a person becoming a member of that Parliament?—Yes.

130. That is exactly the mischief that is provided against with reference to the Parliament of Victoria by the statutes passed by the Colonial Legislature?—Yes.

Lord Francis Hervey.

131. You look upon this as a question whether the case is within the mischief intended to be remedied by the old Acts, and not as a question whether this is verily and literally an office under the Crown?—I look upon it in both aspects. I think in determining the meaning of the words in the statute, the Committee would also consider what lawyers call the true intent and meaning of the statutes, and the evils which were intended to be guarded against, when they were passed. Now the evils intended to be guarded against by these statutes were the multi-

Lord Francis Hervey—continued.

plication of new offices, and the intrusion into Parliament of a number of place-men, who were not independent, but were under the influence of the Ministers of the Crown.

Mr. Attorney General for Ireland.

132. With regard to the mischief at which all these Acts of Parliament were levelled, I understand that you consider that their object was to prevent the undue multiplication of place-men who might be assumed to be under the influence of the Crown, or the Ministers within the walls of Parliament?—Yes.

133. And if Sir Bryan O'Loughlin ceased to be Attorney General for Victoria, the moment he ceased to reside in the Colony of Victoria, and would therefore be free from office if he came to this country and took his seat in Parliament, do you think he would be beyond the mischief of the statutes?—I think he is entirely beyond the mischief of the statutes, whether he is in the colony or not. If he came home, divested of his office, he would be free from all official influence. Or he might possibly obtain leave of absence and attend to his duties in Parliament; that is conceivable, at all events; but still I apprehend, from his position in the Colony, he would not be very amenable to the influence of the Ministers of the Crown in this country.

134. The fifth section of the 51st Geo. 3, chap. 52, to which you have referred, and which is the section substantially stating that appointments made by the Lord Lieutenant of Ireland shall have the same effect as if they were appointments under the Crown, was passed since the Union?—Yes.

135. Therefore, it was passed at a time when the Lord Lieutenant had not a separate legislature in Ireland?—It was immediately after a separate legislature had been superseded; but the Lord Lieutenant still exercised a wide administrative authority, including the appointment to many offices.

136. Do you consider that the 5th section of the 41st Geo. 3, chap. 52, was merely passed from extreme caution, and was declaratory of the old law that would prevail in Parliament; or do you consider that it was a necessary qualification, and could only be introduced by legislation?—I think that it arose from the fact that on the union of the two countries it became necessary to define exactly what offices should vacate seats. It was evident that an officer appointed by the Lord Lieutenant would be, to use a phrase which has been already used, within the mischief of the former Acts, and therefore it was made clear, if there was any doubt about it before, by the Statute of the 41st Geo. 3.

137. With reference to your words, "if there was any doubt about it," supposing there was no 5th Section in the 41st Geo. 3, having regard to the position of the Lord Lieutenant of Ireland as being the direct representative of the Queen, not having a separate legislature either then or now in Ireland, do you consider that an appointment made by him, altogether independently of this section, could be described as an appointment held under the Crown?—Had it not been for that Statute, I should certainly have formed the opinion that an officer appointed by the Lord Lieutenant, under these circumstances, would have been disqualified; but, inasmuch as that Statute was passed, and one cannot believe that it was passed without reasonable occasion—in the
opinion

Mr. Attorney General for Ireland—continued.

opinion of the lawyers of that time—I should be bound to take rather the other view. At all events there must have been doubts upon the subject, otherwise legislation would have been superfluous.

138. It might have been declaratory, might it not?—Yes.

Mr. Lowther.

139. I understand that you draw a distinction between the Act of a Governor and the Act of the Sovereign herself; that is to say, that a disqualification which is manifest, if the appointment was made by the Sovereign in person, does not, you say, attach to an appointment by a Governor?—Yes; I should say so in the case of a Governor under the constitutional system, where the Governor has a discretion without reference to the Crown. That is the distinction which separates the two classes of cases.

140. Is there anything, so far as you know, to prevent instructions being forwarded by the Secretary of State to the Governor of Victoria, directing him to make no appointment to any specified office; for instance, the office of Attorney General, without reference to the Colonial Office direct?—Such instructions might be given, but it is obvious that no such instructions were given to the Governor of Victoria in this case.

141. I ask whether there is anything, so far as you are aware, which would prevent the Secretary of State from transmitting instructions to the Governor of Victoria directing him to make no appointment to any named office, or, in fact, to any office at all, unless he previously communicated with the Secretary of State by telegraph for instructions?—The authority of the Crown over the Governor is not impaired by the Colonial Constitution Act; but I think, from the nature of responsible government in Victoria, it is not probable that the Secretary of State would give such instructions. The nomination to responsible offices rests with the Ministers or the Leaders of Opposition who have acquired the command of the majority in the Colonial Legislature. They advise the Governor to appoint certain responsible Ministers to form the Government of the time. They submit the list to the Governor, who, if he thinks fit, accepts it. I think it is scarcely a case in which the authority of the Crown at home would be interposed.

142. You hold then that the Governor could not be instructed to refer to the Home Government before doing any act of that kind, which he does on his own authority?—No. Of course the authority of the Crown remains intact; and if the responsible advisers of the Crown at home were to advise Her Majesty to send such instructions to the Governor, they might, no doubt, be sent, and the Governor would be bound to give effect to them; but, as a matter of practice, they are not sent, because constitutional Government is allowed to work itself freely out in the Colony.

143. The question I was asking was, whether, although it is not usual so to do, there is anything to render it illegal for the Secretary of State to adopt that course?—Clearly not; because the Governor has merely the administration of the government of the Colony, on behalf of Her Majesty, and he still remains subject to Her directions.

Mr. Lowther—continued.

144. That being so, the Governor being directly under the influence of the Government at home, that is to say, of the Crown, do you consider that there is any substantial difference, in a legal point of view, between an appointment made by a nominee of the Crown remaining, as you say, under the direct influence of the Crown, and an appointment made by the Crown itself?—Yes, I confess I do; but, of course, that is the question which the Committee have to determine. I have merely pointed out the distinction, that the Governor appoints under the Constitution Act of Victoria, as well as under his commission from the Crown. Both those authorities have to be considered in the matter, and I regard the Constitution Act as giving him a very wide discretion in the administration of the affairs of the Colony, including the appointment to offices.

Mr. Attorney General.

145. The Governor appoints in this case under the 37th Section of the Constitution Act of 1854?—Yes.

146. Because the Attorney General is an officer liable to retire from office on political grounds?—Yes.

147. Therefore in the Governor solely and wholly is vested the power of appointing the Attorney General?—Yes.

148. Let me have your attention for a moment to the Constitution Act of Victoria of 1854. It provides by Section 17, "If any Member of the Legislative Council, or the Legislative Assembly, shall accept any office of profit under the Crown during pleasure, his seat shall thereupon become vacant; but such person shall, if otherwise duly qualified, be capable of being re-elected?"—Yes.

149. So that the Victorian Constitution Act recognises that there may be in Victoria an "office of profit under the Crown"?—Yes.

150. Would you say that the Attorney Generalship of Victoria would be, in Victoria, such an office?—Yes, in Victoria certainly.

151. That is to say, the Attorney General being appointed by the Governor, would be disqualified, or rather he would come within this Act, because he would be liable to the influence of the Crown?—The object of that Statute is not so distinct as the object of the Statutes passed by the Imperial Parliament; but no doubt that Statute was founded upon the same general lines as those of the English Statutes. Some persons are allowed to sit, after re-election by their constituents; others are wholly disqualified. The Attorney General belongs to the former class.

152. The idea being that a man who held such an office might possibly be unduly influenced by the Crown?—Yes, I think the Colonial Legislature accepted the same principles as those which obtain in the mother country.

153. This being so, the Victorian Constitution Act of 1854 was approved and confirmed, so to speak, by an Imperial Act, the 18th and 19th Victoria, chapter 55?—Yes.

154. That is a confirmation not only by the Crown but by the Legislature of this country?—Yes.

Sir
T. E. May,
K.C.B.
24 March
1879.

Tuesday, 25th March 1879.

MEMBERS PRESENT:

Mr. Adam,
Mr. Attorney General for Ireland.
Mr. Secretary Cross.

Mr. James Lowther.
Mr. O'Shaughnessy.
Mr. Spencer Walpole.

MR. SECRETARY CROSS, IN THE CHAIR.

Mr. JOHN BRANSTON, called in; and further Examined.

Mr.
Branston.
25 March
1879.

Chairman.

Chairman—continued.

155. YOU were referred yesterday to a paragraph in the Memorandum drawn up by the Attorney General for Ireland, in those words:—"In 'Chambers on Elections,' under the heading 'Offices held to Vacate Seats,' there is a long list of offices given whose names would go to show that they were connected with the Colonies, namely, Barbadoes, Virginia, Dominica, Gibraltar, Trinidad, Jamaica, Leeward Islands, &c.; nothing whatever is stated there as to the nature, tenure, or mode of appointment to these offices"; and you were good enough to say that you would look up those cases before to-day; have you done so?—I have done so, so far as I could.

156. Will you be good enough to take them in the order in which they stand here. Take, first of all, Barbadoes; what have you to say about that?—The office I referred to in Barbadoes was that of Chief Registrar, Sole Examiner, or Chancery Clerk of the Crown and the Peace. The name of the officer was G. A. Selwyn. The appointment was in 1763, and the Motion for the new Writ will be found in the 28th Volume of the *Commons' Journals*, at page 520. I have been unable to ascertain how that appointment was made, but I can say this, that it was not made by warrant. Any correspondence relating to it would be in the Record Office, but the Warrant Books are all in our Department.

157. You have searched them?—I have had them searched.

158. Was Barbadoes a Crown Colony at that time?—It was a Legislative Colony, with all the appointments made, as now, from home, that is, by the Queen, or the Governor, under Her instructions.

159. Under the instructions of the Crown?—Yes. As we are referring to Barbadoes, perhaps I may say that I have had an extract made from the oldest Barbadoes Commission that I could find. That was in the year 1741 or 1742. It runs in this way: "And we do hereby authorise and empower you to constitute and appoint Judges (and in cases requisite), Commissioners of Oyer and Terminer, Justices of the Peace, and other necessary officers and ministers in Our said Islands, respectively, for the better administration of justice, and putting the laws in execution, and to administer, or cause to be administered, unto them such oaths or oaths as are usually given for the due execution and performance of offices

and places, and for the clearing of truth in judicial causes."

160. Is that all you have to say as to Barbadoes?—No, I find that in 1768 Henry Beecoles was appointed Attorney General of Barbadoes under the Great Seal of England.

161. Was the constitution of Barbadoes the same at that time?—It was a Legislative Colony, I believe, at that time; but in 1769, that is, the following year, some change was made in the constitution of Barbadoes, although what that change was I have not had time to ascertain. I find that in 1776 Mr. Bradford was appointed Solicitor General of Barbadoes, and in his case a Warrant was issued under the Royal Sign Manual directing the Governor to admit him to the office in the same way as the present Attorney General of Barbadoes has been appointed.

Mr. Walpole.

162. In those two cases the question of the writ did not arise, I suppose?—No, not in the last two cases that I have mentioned, but I thought it might be convenient to the Committee that I should give such information as I have. If I had time I could trace out a good many more.

Mr. O'Shaughnessy.

163. To whom was the instruction from the Crown that you read, addressed?—It was the Governor's Letters Patent.

164. It was addressed to the Governor?—It was the Governor's Commission issued under the Great Seal.

165. Is the office to which Mr. Beecoles was appointed one of the offices included within those Letters Patent issued by the King to the Governor?—I should say not, seeing that as Attorney General he was appointed under the Great Seal.

166. Will you kindly read the offices mentioned in those letters patent?—"Judges, Commissioners of Oyer and Terminer, Justices of the Peace, and other necessary officers and ministers in our said Islands," which I should explain by saying that the Governor of Barbadoes was Governor of the Caribbean Islands generally, "for the better administration of justice, and putting the laws into execution."

167. Would there be any objection to have that

Mr. O'Shaughnessy—continued.

that Paper handed in?—I have already read the whole of it to the Committee. While speaking of Barbadoes, I may mention that I observe that there was another Barbadoes case cited by Chambers, indeed there were two more. One of those is the case of a Governor of Barbadoes, and I did not think it necessary to look up that case, he being, of course, the Queen's representative. A new Writ was moved for his seat, as will be found in the 23rd Volume of the Commons' Journals, at page 32. In the 24th Volume of the Journals, at page 161, in the year 1742, it will be found that a Writ was moved in the place of Andrew Stone, who had accepted the post of Secretary for Barbadoes. I have looked up his appointment, and I find that he was appointed under the Great Seal.

168. By Warrant, I presume?—No, the document in our office is a copy of the Warrant to the Law Officers to prepare (I forget the exact words); but a document to pass under the Great Seal for the purpose of granting this gentleman the office.

Chairman.

169. Therefore the appointment was direct from the Crown?—Yes.

170. Under the Sign Manual?—No; under the Great Seal.

Mr. Walpole.

171. In neither of those cases did any question arise as to whether the seat was vacated or not?—No.

172. It was assumed that the seat was vacated?—Yes; the Writ was moved on the ground that the seat was vacant by the appointment.

Chairman.

173. Have you anything more to say about Barbadoes?—No.

174. Will you take Virginia next?—With regard to Virginia, the office in question is that of Clerk of the Customs. The motion for a new Writ will be found in the 20th Volume of the Journals, at page 98.

175. What was the constitution of Virginia at that time?—I have not gone through it, but I have ascertained that in 1768 (that was some years later) the Attorney General of New York, A. D. Kempe, by name, was appointed upon Warrant. A Warrant was sent to the Governor to admit him.

176. Have you any further information to give to the Committee as to Virginia?—No.

177. Now will you go to Dominica?—In the 44th Volume of the Journals, at page 6, you will find that a Writ was moved in consequence of a gentleman, whose name I have not taken down, having accepted the Collectorship of Customs in Dominica.

178. Do you know what the constitution of Dominica was at that time?—No, I cannot say.

Mr. Adam.

179. In what year was that?—I did not look up the year; I may say that I had to go to the Temple Library to get at any of this information, and I had not time to work it all out completely.

Mr. Leathes.

180. The constitution of Dominica was altered, I see, lately?—Yes; but this would have been, presumably, about 1786.

Chairman.

181. How was that person appointed, do you know?—No; I am under the impression that officers of Customs in the Colonies were appointed by the Commissioners of Customs in England; I could verify that, but that is my impression, because I have seen an old instruction to a Governor, in which there is reference to the Commissioners of Customs.

182. The Collectors of Customs in the Colonies were appointed direct by the Commissioners of Customs in England?—I imagine so.

Mr. O'Shaughnessy.

183. The seat was vacated in that case?—Yes; those seats were vacated; I could ascertain the mode of appointment by reference.

Chairman.

184. Have you anything further to say about Dominica?—No; that is the only case in Dominica by itself; there is a case of a Governor of the Leeward Islands.

185. We will come to them directly. Have you anything to say about Gibraltar?—In the 40th Volume of the Journals, at page 861, it will be found that a Writ was moved for.

186. Gibraltar was a Crown Colony?—Yes; the Member was appointed Commissary of Stores, so that he would be, probably, a military officer, but I did not trace that out. I doubt whether I could have verified it.

187. Now Trinidad?—There is the record of a Motion for a new writ in the 58th Volume of the Journals, at page 257; that would be at the beginning of this century. It was the case of a Commissioner for the Government.

188. What was the constitution of the Colony?—It would be legislative. I might perhaps have traced out that case, because being Commissioner for the Government, he probably would be one of several appointed to exercise the office of Governor.

189. Do you know how he was appointed?—I cannot say for certain, but presumably by Commission from the Queen.

190. Jamaica?—In the 61st Volume of the Journals, at page 3, it will be found that there was a Motion for a new Writ, in the case of a person who had become Lieutenant Governor. I did not trace that out, he being the Queen's representative. In the 30th Volume of the Journals, at page 4, in A.D. 1765, you will find that there was a new Writ moved for, because Mr. Nicholas Herbert was appointed Secretary for Jamaica. I am unable to trace the instrument of appointment. We presume that it was issued as a Patent in England; we have no record of it in our own Warrant Books.

191. What is the office of Secretary?—He is what is called Colonial Secretary now, that is to say, the Chief Civil Executive Officer under the Governor.

Mr. Adam.

192. How is he appointed?—At the present day he would be appointed by a Warrant to the Governor to admit him under a Commission under the Seal of the Colony.

Mr. Leathes.

193. That is since it became a Crown Colony?—No, at all times, as far back as our books would go.

Mr.
Browson.
—
25 March
1879.

Mr.
Barnard.
25 March
1879.

Mr. Adam.

194. Was it a Crown Colony in former times?
—It was Legislative formerly.

Chairman.

195. Have you any more cases from Jamaica?
—There are only those two from Jamaica.

196. Then we come to the Leeward Islands?
—In the 54th Volume of the Journals, at page 146, there is the case of a Governor appointed to the Leeward Islands, his seat being vacated of course.

197. What was the Constitution of the Leeward Islands at that time?—It would have been Legislative; but thinking the case of a Governor, of course I did not go further into it.

198. How would the Governor be appointed?
—He would be appointed by Commission from the Queen. And in the 53rd Volume of the Commons' Journals, at page 433, I find that in 1772 James Townsend Oswald vacated his seat on appointment as Secretary to the Leeward Islands. We have no trace of a Warrant for that appointment, therefore we presume that it was by Patent from the Crown.

199. Have you now completed the statement of the results of your search, or have you any further information?—There is also quoted by Chambers the case of a seat vacated by the appointment to the Governorship of Gibraltar; that will be found in the 50th Volume of the Journals, at page 308; and there is the case of a Governor of Nova Scotia, in the 31st Volume of the Journals, at page 8, and a Governor of the Cape of Good Hope, in the 69th Volume of the Journals, at page 125.

200. But all appointments of Governors would be direct from the Crown?—Yes; there is a case of a Lieutenant Governor of Upper Canada, in the 47th Volume of the Journals, at page 46. I am not sure how he would be appointed. I ought to have had the cases of Lieutenant Governors traced, because they may be different from the Governors. I can do so if it is wished; there are two of them. There is also a case quoted in this passage of Chambers in 1806; that is in the 41st Volume of the Journals, at page 335. Sir Charles Montagu Ormsby was appointed Recorder of the Prince of Wales' Island. We have no record of that appointment, and I am informed that at that time it would have been under the India Office. That completes the list of the names referred to by Chambers.

201. Have you anything further that you wish to state to the Committee?—I can head in an extract from an old Commission to the Governor of the Leeward Islands in reference to appointments. It is dated 1783, and is in almost exactly similar terms to that of Barbadoes, which I have quoted (the same was handed in).

Mr. O'Shaughnessy.

202. Could we have some further information about the Collector of Customs in Dominica, and also some further information about Sir Charles Ormsby, who was appointed to the Recordership of the Prince of Wales' Island. I understand you to say that the latter appointment was probably made by the India Office, and therefore I suppose you would not be able to follow it up?—No, I should not in that case.

Mr. Adam.

203. Would that be by the East India Company?—I cannot say.

204. In all the cases you have mentioned the seats were vacated and the Writs moved, in consequence of the acceptance of those particular offices?—Yes.

205. It was not that the Members took the Children Hundreds, or vacated their seats in any other way?—No, at least I have not verified every case, but so far as I am aware, it was not so.

206. In the cases of the Collectorship of Customs in Dominica, and the Recordership of the Prince of Wales' Island, were the seats vacated in consequence of the acceptance of those particular offices?—Yes; I referred to five out of this list, and in each of those cases I find that Chambers has correctly referred to the Commons' Journals, and therefore I have no doubt that he is equally correct in the other cases.

207. The Writs were moved for in consequence of the acceptance of those particular offices?—Yes.

Mr. Louth.

208. Will you state briefly what were the cases you mentioned with regard to the Leeward Islands?—A Governor and a Secretary.

209. Only those two?—Yes, and the Collector of Customs in Dominica.

Mr. Attorney General for Ireland.

210. Which of these cases do you yourself think approaches most nearly to that of Sir Bryan O'Loughlin? you are acquainted with the way in which Sir Bryan O'Loughlin was appointed?—Yes, generally.

Mr. O'Shaughnessy.

211. Are you an expert in these matters?—I have been Attorney General in Australia. I was so in Queensland, which is of course not entirely similar.

Mr. Attorney General for Ireland.

212. Were you present yesterday when the documents were read?—Yes.

213. Are you aware, therefore, that the Governor of Victoria has, under the Constitution Act of that Colony, and under his own commission of appointment, the power of appointing the Attorney General without any reference to the Home Government?—Certainly.

214. And the power of dismissing him without any reference to the Home Government?—Yes.

215. Bearing those facts in mind, which of those cases to which you have referred the Committee now do you consider approaches most nearly to that of Sir Bryan O'Loughlin?—I imagine the case of Mr. Selwyn, the Chief Registrar, sole Examiner, or Chancellor Clerk of the Crown and the Peace in Barbadoes.

Mr. O'Shaughnessy.

216. Did he vacate his seat?—Yes, he vacated his seat, but I cannot trace the mode of his appointment.

Mr. Attorney General for Ireland.

217. Speaking of the cases in which you are able to trace the mode of appointment, do you consider that there is any analogy between those cases

Mr. Attorney General for Ireland—continued.

cases and the case of Sir Bryan O'Loughlin?—I may state that I have only traced two; in fact, I ought rather to say that I have only traced one, and that bears no analogy to the case now before the Committee, because it was an appointment under the Great Seal.

218. So that, in fact, so far as your researches go, you have not been able to find any case that is analogous to that of Sir Bryan O'Loughlin?—I confined my researches chiefly to the cases cited by Chambers.

219. But as far as your researches have gone, you have not found a case that is analogous to that of Sir Bryan O'Loughlin?—No.

Mr. Leather.

220. I think you have stated that you held the office of Attorney General in a Colony?—Yes, in Queensland.

Mr. O'Shaughnessy.

221. You were Her Majesty's Attorney General, were you not?—Yes.

222. Holding the office under the Crown?—I presume so; I have not my Commission with me to-day, but I was appointed by the Governor, but not under the advice of the Executive Council.

Mr. WILLIAM DEALTRY, called in; and further Examined.

Chairman.

227. *Mr. BERRY* told us yesterday, in answer to Question 11, "There is a special appropriation which forms part of Schedule D. of the Constitution Act, by which 14,000*l.* a year is set apart for the payment of the responsible Ministers of the Crown. That is varied from time to time by the Government of the day sitting in Cabinet, and then it is made an Order of Council, and becomes binding, until it is revoked and altered by any subsequent arrangement;" has your attention been called to the 60th section of the Victorian Constitution Act?—Yes.

228. Section 60 is this: "The Legislature of Victoria, as constituted by this Act, shall have full power and authority, from time to time, by any Act or Acts, to repeal, alter, or vary all or any the provisions of this Act, and to substitute others in lieu thereof. Provided, it shall not be lawful to present to the Governor of the said Colony for Her Majesty's assent, any Bill by which an alteration in the constitution of the said Legislative Council or Legislative Assembly, or in the said Schedule hereby annexed, marked D., may be made unless the Second and Third Readings of such Bill shall have been passed with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council and of the Legislative Assembly respectively?"—Yes.

229. Do you find analogous provisions in Section 4 of the Imperial Act, the Confirming Act?—Yes.

230. Can you tell us whether any such Bill did pass?—There have been only two such Bills, so far as I am aware, that have passed. The one was for an alteration amounting to 50,000*l.* in order to provide for the abolition of State aid to Religion; this was done by a reserved Act which was sent home and approved by Order in 1864.

Mr. O'Shaughnessy—continued.

223. Under a Warrant?—No, there was no Warrant.

224. Under the Letters Patent to the Governor constituting him Governor, and enabling him to make the appointment?—Yes, and then there was an appointment under the seal of the Colony.

[May I mention one question which was put to me yesterday; I refer to No. 67, which was, "And the selection is left entirely to the Governor in that case"; my answer reads, "In Victoria to the Governor and his Council." I wish to alter that, because what I meant to say was, that the selection is left to the Governor, who acts upon the recommendation of the chief of his Ministry.]

Mr. Leather.

225. Upon the recommendation of the Prime Minister of the Colony?—Yes.

Mr. Attorney General for Ireland.

226. The Governor acts as a kind of local Sovereign?—Quite so. Perhaps I may add that in the West Indian Colonies, although they had legislative authority, the officers have been, as I understand, always appointed either direct by the Crown, or by Warrant, to the Governor, or by him upon instructions from home.

Chairman—continued.

Council; and the other was an Act relating to the allowances for the Staff of the Governor, &c., amounting to 5,000*l.*, which were abolished. In that case also there was a reserved Act, which was sent home for approval. If you will be good enough to turn to Section 48 of the Imperial Confirming Act, the 18 & 19 Vict. c. 55, you will see that it says: "It shall be lawful for the Governor to abolish any of the offices named in the third and fourth parts of the said Schedule, or to apply the sums thereby appropriated to such other purposes connected with the administration of the Government of Victoria as to Her Majesty, her heirs and successors, shall seem fit." It speaks "of the offices named in the third and fourth parts," and the Attorney General is named in the third part, I think. I apprehend it has been the custom of the Ministers when a new Ministry has been appointed in Victoria, in accordance with their constitution, to arrange among themselves what their respective salaries shall be.

Mr. Attorney General for Ireland.

231. I pointed out to you yesterday, in Question 43, that very section, and asked whether you thought it gave the power of alteration that you referred to, and your answer was, "I think they have a power of alteration?"—Yes.

232. But this section gives no power of alteration; what it gives is a power of absolute abolition. It would be competent under this 48th Section to abolish the Attorney Generalship altogether, but that cannot be the section under which the salary of the Attorney General was cut down from 1,700*l.* odd, to 1,600*l.* odd?—It says, "Or to apply the sums thereby appropriated to such other purposes," and so on.

233. But that would be after the abolition of the

*Mr.
Brookes.
25 March
1879.*

*Mr.
Destry.*

Mr.
Deasy.
25 March
1879.

Mr. Attorney General for Ireland—continued.
the office; the abolition would be a condition precedent?—I believe the case to be as I have said, but Sir Archibald Michie is really the only person who is capable of giving precise information upon these subjects, as this legislation occurred so long ago. He was Attorney General of Victoria in 1837, shortly after this Act was promulgated, and again in 1870. He is now the Agent General for Victoria in London.

Chairman.

234. That is the only way you can account for the difference between these sums which you mentioned in answer to Question 44, namely, 1,701 £ and 1,630 £?—Yes, I cannot understand it otherwise: I think they must have arranged it amongst themselves; you will observe that they are broken sums.

235. The accounts of the way in which this 14,000 £ has been spent ought to be submitted to Her Majesty's Treasury, ought they not?—The Act says, "In such manner and form as Her Majesty shall be graciously pleased to direct;" that is in Section 46 of the 18 & 19 Vict. c. 55, but I cannot find out that any instructions were ever sent out in Her Majesty's name, saying in what manner and form those accounts should be sent home, and therefore, I believe they have, in fact, never been sent to the Treasury.

236. Consequently, that section is a dead letter, in fact?—I think so; exactly the same words appear in the New South Wales Constitution Act. Perhaps I may be allowed to call the attention of the Committee to part of a Despatch from the Secretary of State to the Governor, in sending out the Constitution Act, showing that he clearly anticipated that the Act would be altered. It is in a Parliamentary Paper of the 24th July 1850. The Despatch is signed by Lord John Russell, and it says, in paragraph 12, "It is, however, by no means their wish (that is, the wish of the Government) to enforce on the Colony the observance of the present arrangement as final. They believe it to be of great importance to the political well-being of a com-

Chairman—continued.

munity, that certain services of the higher class should be provided for by law, and not subject to annual vote. But they regard this as a subject of strictly local, however high, concern, and that they would not be justified in throwing other obstacles in the way of its reconsideration than what the local legislature have themselves thought proper to raise."

Mr. Attorney General for Ireland.

237. But that merely states in the form of a despatch what is already referred to in Section 4 of the Imperial Confirming Act, the possibility of alteration?—Yes; that section gave the power, but this anticipates that the power will be carried out; that the Colony would make the alteration.

Mr. Loewther.

238. I believe you wish to correct a question and an answer in yesterday's Evidence?—Yes; I wish to ask you to alter the form of your question.

239. In Questions 51 and 52, I inquired, "When you get them" (that is, the accounts from the Colonies), "sooner or later, what is done with them?" and you said, "If we consider them very important we send them to the Treasury"; then I asked, "And otherwise put them into the waste-paper basket?" and you said, "I would not go so far as to say that, but they are put aside"; of course, I am aware from my knowledge of the office that a waste-paper basket does not exist?—No. When we receive these Sessional Papers, which are sent over rather irregularly, they are almost always looked through, and when we find in them matter of interest to any Department, such as Telegraphs, which would be of interest to the Post Office, or Railways, which would be of interest to the Board of Trade, or to the Institution of Civil Engineers, they are sent to those Departments; but papers relating to the expenditure are usually put aside for purposes of reference. As I said yesterday, if we consider them very important, they are sent to the Treasury.

A P P E N D I X.

LIST OF APPENDIX.

Appendix, No. 1.

Papers handed in by Mr. Dealtry:	PAGE.
Despatch from the Colonial Office to Governor of Victoria	17
Despatch from the Governor of Victoria to the Colonial Office	17
Telegram from the Secretary of State for the Colonies to the Governor of Victoria, dated 18th March 1879	18
Telegram from the Governor of Victoria to the Secretary of State, dated Melbourne, 18th March 1879	18

Appendix, No. 2.

Papers handed in by Mr. Bramston, 24 March 1879:	
Victoria.—Draft of a Commission passed under the Great Seal of the United Kingdom appointing Sir George Ferguson Bowen, <i>K.C.M.G.</i> , to be Governor and Commander in Chief of the Colony of Victoria and its Dependencies.—Letters Patent, dated 21st May 1873	19
Victoria.—Draft of Instructions passed under the Royal Sign Manual and Signet to George Ferguson Bowen, <i>K.C.M.G.</i> , as Governor and Commander in Chief of the Colony of Victoria and its Dependencies.—Dated 21st May 1873	21

Appendix, No. 3.

Paper handed in by Mr. Bramston, 25 March 1879:	
Extract from Governor Mathew's Commission.—Leeward Islands, 10 May 1793	23

Appendix, No. 4.

Papers handed in by Sir Thomas Eschine May, 24 March 1879:	
(A.)—Extracts from Journals of the House of Commons	24
(B.)—Report from the Select Committee respecting Members accepting Offices Abroad	25

Appendix, No. 5.

Memoirandum handed in by Mr. Attorney General for Ireland	26
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A P P E N D I X.

Appendix, No. 1.

PAPERS handed in by Mr. Dealtry.

DESPATCH from the Colonial Office to Governor of Victoria.

Appendix, No. 1.

(Victoria.—No. 95.)

Sir,

Downing-street, 13 August 1878.

I HAVE the honour to transmit to you a copy of the Report from a Select Committee of the House of Commons appointed to inquire whether Sir Bryan O'Loughlin has vacated his seat for the county of Clare by accepting the office of Attorney General of the Colony of Victoria.

H. C. 362—
8 August 1878

I also enclose a copy of an Address agreed to by the House of Commons, directing me to communicate a copy of the Report from the Select Committee to Sir Bryan O'Loughlin.

I have, therefore, to request that you will communicate the documents which I now enclose to Sir Bryan O'Loughlin, and that you will ask him to furnish an acknowledgment of their receipt for transmission to me.

I have, &c.

Governor Sir G. F. Bowen, G.C.M.G.,
&c. &c. &c.

(signed) M. E. Hicks Beach.

DESPATCH from the Governor of Victoria to the Colonial Office.

(Victoria.—No. 191.)

Sir,

Government House, Melbourne, 8 October 1878.

I HAVE the honour to acknowledge the receipt, on the 2nd instant, of your Despatch, No. 95, of the 13th August ultimo, transmitting a copy of the Report from a Select Committee of the House of Commons, appointed to inquire whether Sir Bryan O'Loughlin has vacated his seat for the county of Clare by accepting the office of Attorney General of the Colony of Victoria; also a copy of an Address agreed to by the House of Commons directing you to communicate a copy of the Report from the Select Committee to Sir Bryan O'Loughlin.

I, in pursuance of your instructions, I have communicated the above-mentioned documents to Sir Bryan O'Loughlin, and I now transmit his acknowledgment of their receipt.

Enclosure.

I have, &c.

The Right Hon.
Sir M. E. Hicks Beach, Bart., M.P.,
&c. &c. &c.

(signed) G. F. Bowen.

Enclosure in Despatch, No. 191, of 1878.

Sir,

Crown Law Office, Melbourne, 7 October 1878.

I HAVE the honour to acknowledge the receipt of a copy of the Report from a Select Committee of the House of Commons appointed to inquire whether I have vacated my seat for the County of Clare by accepting the office of Attorney General of this Colony; also a copy of an Address agreed to by the House of Commons that a copy of that Report should be communicated to me.

His Excellency the Governor of Victoria,
&c. &c. &c.

I have, &c.
(signed) *Bryan O'Loughlin.*

TELEGRAM from the Secretary of State for the Colonies to the Governor of Victoria,
dated 18th March 1879.

Urgent.—Telegraph to me immediately for House of Commons, in full, Sir Bryan O'Loughlin's Commission as Attorney General.

TELEGRAM from the Governor of Victoria to the Secretary of State, dated Melbourne,
19th March 1879.

The following is true copy of Sir Bryan O'Loughlin's Commission as Attorney General for Victoria by His Excellency Sir George Ferguson Bowen, Knight, Grand Cross of the most distinguished Order of Saint Michael and Saint George, Governor and Commander in Chief in and over the Colony of Victoria and its dependencies, and Vice Admiral of the sea, &c. &c. &c.

To the Honourable Sir Bryan O'Loughlin, Baronet, M.L.A. of the City of Melbourne, in the Colony of Victoria, by the power and authority vested in me in this behalf:—I, Sir George Ferguson Bowen, the Governor of the said Colony, relying on your loyalty, integrity, learning, and ability, have constituted and appointed, and by these presents do constitute and appoint you the said Sir Bryan O'Loughlin, Baronet, to be the Attorney General of the said Colony of Victoria, to have, hold, and enjoy the said office unto you the said Sir Bryan O'Loughlin, Baronet, during pleasure and your residence in the said Colony, and execution of the duties of the said office in person, unless in case of sickness or leave of absence being duly granted to you, together with all and singular, the rights, powers, jurisdictions, and privileges to the said office appertaining in the most full and ample manner. Given under my hand, and the seal of the Colony, at Melbourne, in the said Colony, this 27th day of March, in the year of our Lord 1878, and in the 41st year of Our Majesty's reign.

(7) Her.

G. F. Bowen,
Governor of Victoria,
Melbourne.

By His Excellency's Command,
Grattan Berry.

Appendix, No. 2.

PAPERS handed in by Mr. Bramston, 24 March 1879.

VICTORIA.

Appendix, No. 2.

DRAFT of a COMMISSION passed under the Great Seal of the United Kingdom appointing Sir George Ferguson Bowen, G.C.M.G., to be Governor and Commander in Chief of the Colony of Victoria and its Dependencies.—Letters Patent, dated 21st May 1878.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to our Trusty and Well-beloved Sir George Ferguson Bowen, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Greeting.

I. WHEREAS We did, by certain Letters Patent, under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster the twenty-third day of May, one thousand eight hundred and sixty-six, in the twenty-ninth year of Our reign, constitute and appoint Our Trusty and Well-beloved John Henry Thomas Manners Sutton, commonly called the Honourable John Henry Thomas Manners Sutton (now Our Right Trusty and Well-beloved Cousin John Henry Thomas Viscount Canterbury, Knight Commander of Our Most Honourable Order of the Bath), to be, during our pleasure, Our Governor and Commander in Chief in and over Our Colony of Victoria, as upon relation being had to the said recited Letters Patent will more fully and at large appear. And whereas, by certain other Letters Patent under the Great Seal of Our said United Kingdom bearing date at Westminster the eleventh day of March, one thousand eight hundred and seventy, in the thirty-third year of Our reign, We did provide that the powers of Our Governor should not vest in Our Lieutenant Governor or the officer administering the Government of Our said Colony of Victoria until he had taken the usual oaths of office. Now know you that We have revoked and determined, and by these presents do revoke and determine the said recited Letters Patent, and every clause, article, and thing therein contained: And further know you, that We, reposing especial trust and confidence in the prudence, courage, and loyalty of you the said Sir George Ferguson Bowen, of Our special grace, certain knowledge, and mere motion, have thought fit to constitute and appoint, and do by these presents constitute and appoint you to be, during Our pleasure, Our Governor and Commander in Chief in and over Our Colony of Victoria (comprising the territories bounded on the west by Our Colony of South Australia, on the south by the sea, and on the east and north by a straight line drawn from Cape Howe to the nearest Source of the River Murray, and thence by the course of that river to the Eastern Boundary of the Colony of South Australia) and its dependencies, hereinafter called our said Colony. And we do hereby authorise and command you in due manner to do and execute all things that shall belong to your said command, and to the trust We have reposed in you according to the several powers and authorities granted or appointed you by virtue of this present Commission, and according to such instructions as are hereunto given to you, or as may from time to time hereafter be given to you, under our Sign Manual and Signet, or by Our Order in Our Privy Council, or by Us through one of Our Principal Secretaries of State, and according to such Laws and Ordinances as are or shall hereafter be in force in Our said Colony.

Preamble.

Cites Governor Viscount Canterbury's Commission, 22nd May 1878.

Letters Patent of 11th March 1870, cited.

Revocation of Letters Patent of 1867 and 1870.

Appointment of Sir G. F. Bowen as Governor.

Boundaries.

Governor's powers and authorities.

II. And We do hereby authorise and empower you to keep and use the Public Seal of Our said Colony for sealing all things whatsoever that shall pass the said Public Seal.

Public seal.

III. And we do further authorise and empower you, in Our name and on Our behalf, to make and execute under the said Seal grants and dispositions of any lands which may be lawfully granted and disposed of by Us within Our said Colony.

Grant of lands.

IV. And We do hereby declare Our pleasure to be that there shall be an Executive Council for Our said Colony, and that the said Council shall consist of such persons as are now or may at any time be declared by any Law enacted by the Legislature of Our said Colony to be Members of Our said Council, and of such other persons as you shall, from time to time, in Our name and on Our behalf, but subject to any Law as aforesaid, appoint under the said Seal to be Members of Our said Council.

Appointment of Executive Council.

Appendix, No. 2.

Appointment of Judges and Justices, &c.

V. And We do further authorize and empower you to constitute and appoint in Our name and on Our behalf all such Judges, Commissioners, Justices of the Peace, and other necessary Officers and Ministers of Our said Colony as may be lawfully constituted or appointed by Us.

Grant of pardons.

VI. And We do further authorize and empower you as you shall see occasion, in Our name and on Our behalf, when any crime has been committed within Our said Colony, to grant a pardon to any accomplice, not being the actual perpetrator of such crime, who shall give such information and evidence as shall lead to the apprehension and conviction of the principal offender; and further to grant to any offender convicted of any crime in any Court, or before any Judge, Justice, or Magistrate within Our said Colony, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to you may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to us.

Remission of fines.

Suspension or removal from office.

VII. And we do further authorize and empower you, so far as We lawfully may, upon sufficient cause to you appearing, to remove from his office, or to suspend from the exercise of the same, any person exercising any office or place within Our said Colony, under or by virtue of any Commission or Warrant granted, or which may be granted, by Us in Our name or under Our authority.

Summoning, proroguing, or dissolving any Legislative Body and appointment of Members thereto.

VIII. And We do hereby farther authorize and empower you to exercise all powers lawfully belonging to Us in respect of the summoning, proroguing, or dissolving any Legislative Body now or hereafter established within Our said Colony, and in respect of the appointment of Members thereto.

Power of granting marriage licences and probates of wills; custody of children.

IX. And We do by these presents authorize and empower you, within Our said Colony, to exercise all such powers as We may be entitled to exercise therein in respect of granting licenses for marriages, letters of administration, and probates of wills, and with respect to the custody and management of idiots and lunatics, and their estates.

Succession to the Government.

X. And We do hereby declare Our pleasure to be that, in the event of your death, incapacity, or absence out of the said Colony, all and every the powers and authorities herein granted to you shall, until Our further pleasure is signified therein, be vested in such person as may be appointed by Us under Our Sign-Manual and Signet to be Our Lieutenant Governor of Our said Colony, or if there shall be no such Lieutenant Governor in our said Colony, then in such person or persons as may be appointed by Us under Our Sign-Manual and Signet to administer the Government of the same. Provided that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the oaths appointed to be taken by the Governor of Our said Colony, and in the manner provided by the Instructions accompanying this Our Commission.

Previous, Lieutenant Governor, &c., to take oaths of office before administering the Government.

Officers and others to obey and assist the Governor.

XI. And We do hereby require and command all Our Officers and Ministers, Civil and Military, and all other the inhabitants of Our said Colony of Victoria, to be obedient, aiding, and assisting unto you the said Sir George Ferguson Bowen, or, in the event of your death, incapacity, or absence, to such person or persons as may, from time to time, under the provisions of this Our Commission, administer the Government of Our said Colony.

In Witness whereof We have caused these Our Letters to made Patent. Witness Ourselves at Westminster, the Twenty-first day of May, in the Thirty-sixth Year of Our Reign.

By Warrant under the Queen's Sign-Manual.

C. Romilly.

VICTORIA.

DRAFT OF INSTRUCTIONS passed under the Royal Sign-Manual and Signet to Sir George Ferguson Bowen, G.C.M.G., as Governor and Commander in Chief of the Colony of Victoria and its Dependencies.—Dated 21st May 1873.

VICTORIA, B.

INSTRUCTIONS to Our Trusty and Well-beloved Sir George Ferguson Bowen, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Our Governor and Commander in Chief in and over Our Colony of Victoria and its Dependencies, or, in his absence, to Our Lieutenant Governor or the Officer administering the Government of Our said Colony for the time being.

Given at Our Court at Balmoral, this twenty-first day of May 1873, in the thirty-sixth year of Our Reign.

I. WHEREAS by a Commission under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing even date herewith, We have constituted and appointed you, the said Sir George Ferguson Bowen, to be during Our pleasure Our Governor and Commander in Chief in and over Our Colony of Victoria and its Dependencies, and have further authorised and commanded you in due manner to do and execute all things that shall belong to your said command and the trust thereby reposed in you, according to the several powers and directions therein mentioned, and particularly according to such instructions as should therewith be given to you: now, therefore, We do by these Our instructions under Our Sign Manual and Signet, being the instructions so referred to as aforesaid, declare Our pleasure to be that you shall, with all due solemnity, cause Our said Commission to be read and published in the presence of the Chief Justice for the time being or other Judge of the Supreme Court of Our said Colony, and of the Members of the Executive Council thereof; and you shall then and there take the oath of allegiance in the form provided by an Act passed in the Session holden in the thirty-first and thirty-second years of Our reign, intitled "An Act to amend the Law relating to Promissory Oaths;" and likewise that you take the usual oath for the due execution of the office of Our Governor and Commander in Chief in and over Our said Colony, and for the due and impartial administration of justice; which oaths the said Chief Justice for the time being of Our said Colony, or in his absence any Judge of the Supreme Court of Our said Colony, shall, and he is hereby required to tender and administer unto you.

II. And We do authorise and require you from time to time, and at any time hereafter, by yourself or by any other person to be authorised by you in that behalf, to administer to all and to every person or persons, as you shall think fit, who shall hold any office or place of trust or profit, the said oath of allegiance, together with such other oath or oaths as may from time to time be prescribed by any laws or statutes in that behalf made and provided.

III. And We do require you to communicate forthwith to Our Executive Council for Our said Colony these Our instructions, and likewise all such others, from time to time, as you shall find convenient for Our service to be imparted to them.

IV. And We do hereby direct and enjoin that Our said Executive Council shall not proceed to the dispatch of business unless duly summoned by your authority, nor unless two Members at the least (exclusive of yourself or the Member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be dispatched.

V. And We do further direct and enjoin that you do attend and preside at the meetings of Our said Executive Council, unless when prevented by some necessary or reasonable cause, and that in your absence such Member as may be appointed by you in that behalf, or in the absence of any such Member, the senior member of the said Executive Council actually present, shall preside at all such meetings; the seniority of the members of the Council being regulated according to the order of their respective appointments as members of Our said Council.

VI. We do further direct and enjoin that a full and exact Journal or minute be kept of all the deliberations, acts, proceedings, votes, and resolutions of our said Executive Council; and that, at each meeting of the said Council, the minutes of the last meeting be read over and confirmed, or amended, as the case may require, before proceeding to the dispatch of any other business.

VII. And We do hereby direct and enjoin that, in execution of the powers and authorities committed to you by our said Commission, you do in all cases consult with Our said Executive Council, excepting only in cases which may be of such a nature that, in your judgment, Our service would sustain material prejudice by consulting Our Council thereupon, or when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for you to act in respect of any such matters: Provided that, in all such urgent cases,

Preamble.

Publication of Commission.

Oaths to be taken by Governor.
Imperial Act, 35 & 36 Vict. c. 75.

Oaths to be administered by the Governor.

Governor to communicate instructions to Executive Council.

Executive Council not to proceed to business unless summoned.
Quorum.

Governor to preside.

Seniority of members.

Journals and minutes to be kept.

Governor to consult Executive Council.

Proviso. Urgent cases.

Appendix, No. c.

you do subsequently, and at the earliest practicable period, communicate to the said Council the reasons which you may have so adopted, with the reasons thereof.

Governor may act in opposition to Executive Council.

Reporting the grounds for so doing.

VIII. And We do authorise you, in your discretion, and if it shall in any case appear right, to act in the exercise of the power committed to you by Our said Commission in opposition to the advice which may in any such case be given to you by the Members of Our said Executive Council: Provided, nevertheless, that in any such case you do fully report to Us, by the first convenient opportunity, any such proceeding, with the grounds and reasons thereof.

Refuse to be observed in assenting to, dissenting from, or reserving Bills.

IX. And in the execution of so much of the powers as are vested in you by law for assenting to, or dissenting from, or of reserving for the signature of Our pleasure Bills which may have been passed by the Legislature of Our said Colony, We do direct and enjoin you to guide yourself, as far as may be practicable, by the following rules, directions, and instructions; that is to say,

Different subjects not to be mixed in the same law.

No clause to be introduced foreign to what the title imports.

Description of Bills not to be assented to.

X. In the passing of all laws, each different matter is to be provided for by a different law, without intermixing in one and the same Act such things as have no proper relation to each other; and no clause is to be inserted in, or annexed to, any Act which shall be foreign to what the title of such Act imports, and no perpetual clause is to be part of any temporary law.

XI. You are not to assent in Our name to any Bill of any one of the classes hereinafter specified; that is to say,—

1. Any Bill for the divorce of persons joined together in holy matrimony.
2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to yourself.
3. Any Bill whereby any paper, or other currency, may be made a legal tender, except the coin of the realm, or other gold or silver coin.
4. Any Bill imposing differential duties.
5. Any Bill the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty.
6. Any Bill interfering with the discipline or control of Our forces in the Colony by land and sea.
7. Any Bill of an extraordinary nature and importance, whereby Our prerogative, or the rights and property of Our subjects not residing in the Colony, or the trade and shipping of the United Kingdom and its dependencies, may be prejudiced.
8. Any Bill containing provisions to which Our assent has been once refused, or which have been disallowed by us:—

Unless such Bill shall contain a clause suspending the operation of such Bill until the signature in the Colony of Our pleasure thereon, or unless you shall have satisfied yourself that an urgent necessity exists requiring that such Bill be brought into immediate operation, in which case you are authorised to assent in Our name to such Bill, unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed upon Us by Treaty. But you are to transmit to Us, by the earliest opportunity, the Bill so assented to, together with your reasons for assenting thereto.

Laws sent home to have marginal abstracts.

Journals and Minutes.

XII. You will take care that all laws assented to by you in Our name, or reserved for the signature of Our pleasure thereon, shall, when transmitted by you, be fairly abstracted in the margin, and be accompanied in such cases, as may seem to you necessary, with such explanatory observations as may be required to exhibit the reasons and occasion for proposing such laws; and you shall also transmit four copies of the Journals and Minutes of the proceedings of the Legislative Bodies of Our said Colony, which you are to require from the clerks, or other proper officers in that behalf, of the said Legislative Bodies.

Regulation of power of pardon.

XIII. And whereas We have, by Our said Commission, authorised and empowered you, as you shall see occasion, in Our name and Our behalf, to grant to any offender convicted of any crime in any Court, or before any Judge, justice, or magistrate within Our said colony, a pardon, either free, or subject to lawful conditions: Now We do hereby direct and enjoin you to call upon the Judge presiding at the trial of any offender who may from time to time be condemned to suffer death by the sentence of any Court within Our said Colony, to make to you a written Report of the case of such offender, and such Report of the said Judge shall by you be taken into consideration at the first meeting thereafter which may be conveniently held of Our said Executive Council, where the said Judge may be specially summoned to attend; and you shall not pardon or reprieve any such offender as aforesaid, unless it shall appear to you expedient so to do, upon receiving the advice of Our Executive Council therein; but in all such cases you are to decide, either to extend or to withhold a pardon or reprieve, according to your own deliberate judgment, whether the members of Our said Executive Council concur therein or otherwise; entering, nevertheless,

less, on the Minutes of the said Council, a Minute of your reasons at length, in case you should decide any such question in opposition to the judgment of the majority of the members thereof.

Appendix, No. 2.

XIV. And We do further direct and enjoin that you do, to the utmost of your power, promote religion and education among the native inhabitants of Our said Colony, or of the lands and islands thereto adjoining, and that you do especially take care to protect them in their persons, and in the free enjoyment of their possessions; and that you do, by all lawful means, prevent and restrain all violence and injustice which may in any manner be practised or attempted against them.

Promotion of religion amongst the natives.

XV. And We do further direct and enjoin that all Commissions granted by you to any person or persons to be Judges, Justices of Peace, or other officers, shall, unless otherwise provided by law, be granted during pleasure only.

Judges, &c., to be appointed during pleasure.

XVI. And we do further direct and enjoin that you do forward to Us annually from year to year, through one of Our Principal Secretaries of State, such annual returns as have been customarily transmitted to Us from the Colony of Virginia relative to the revenue and expenditure, militia, public works, legislation, civil establishments, pensions, population, schools, course of exchange, imports and exports, agricultural produce, manufactures, and other matters as the said "returns" more particularly specified, with reference to the state and condition of Our said Colony.

Blue Book.

XVII. And whereas great perijudice may happen to Our service and to the security of Our said Colony by the absence of the Governor, you shall not upon any pretence whatever quit Our said Colony without having first obtained leave from Us for so doing under Our Sign Manual and Signet, or through one of Our Principal Secretaries of State, except for the purpose of visiting any neighbouring Colony for periods not exceeding one month at any one time, nor exceeding in the aggregate one month for every year's service in the Colony.

Governor's absence

F. R.

Appendix, No. 3.

PAPER handed in by Mr. Brownson, 25 March 1879.

EXTRACT from GOVERNOR MATTHEWS'S COMMISSION.—LEeward Islands, 10 May 1733. Appendix, No. 3.

AND We do hereby give and grant unto you, and in your absence, to Our Lieutenant General or Lieutenant Governors respectively, full power and authority to constitute and appoint judges (and in cases requisite), Commissioners of Oyer and Terminer, Justices of the Peace, Sheriffs, and other necessary Officers and Ministers, in all and every our said Islands, for the better administration of justice, and putting the laws in execution. And to administer, or cause to be administered unto them, such oath or oaths as are usually given for the due execution and performance of offices and places, and for the clearing of truth in judicial causes.

Appendix, No. 4.

PAPERS landed in by Sir Thomas Erskine May, 24 March 1873.

Appendix, No. 4.

(A.)

Commons' Journals,
Vol. xvii, p. 81.

15 February 1711.

Durham Writ.

A MOTION being made, and the Question being put, That Sir Henry Belasis, Knight, having, since his being elected Member to serve in Parliament, accepted the Office of One of the Commissioners appointed by Her Majesty To inquire into the Number and Quality of the Forces in Her Majesty's pay in Spain and Portugal; and to examine the state of the payments and accounts relating to the said Forces, and to the Garrisons and Fortifications of *Gibraltar* and *Port Mahon*; and also the Accounts of the Agent, Victuallers, and Commissioners of Stores in those parts, his Election is thereby become void. Question, on Division, resolved in the Affirmative.

New Writ issued.

Commons' Journals,
Vol. xvii, p. 720,
9 July 1714.

Truro Writ.

New Writ for the Borough of Truro, in the County of Cornwall, in the room of Thomas Hare, Esquire, who, since his Election for the said Borough, hath accepted the Office of First Register and Clerk of the Crown in *Barbados*.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 25.Commons' Journals,
Vol. xvii, p. 624,
12 July 1717.

Westlow Writ.

New Writ for the Borough of Postpigham, alias Westlow, in the County of Cornwall, in the room of Thomas Maynard, Esquire, who, since his Election for the said Borough, hath accepted the Office of Commissary General of Stores for War, and Provisions, in the Island of *Miscova*.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 30.Commons' Journals,
Vol. xvii, p. 699,
25 November 1717.

Berealston Writ.

New Writ for the Borough of Berealston, in the County of Devon, in the room of Horatio Walpole, Esquire, who, since his Election for the said Borough, hath accepted the Office of Surveyor and Auditor General of all His Majesty's Revenues arising in *America*.

Afterwards chosen for *Eastlow*, re-elected, *Beaton's Parliamentary Register*, I., p. 39.Commons' Journals,
Vol. xvii, p. 47,
24 December 1718.

St. Germans Writ.

New Writ for the Borough of Saint Germans, in the County of Cornwall, in the room of John Knight, Esquire, who, since his Election for the said Borough, hath accepted the Office of Secretary for the *Leeward Islands*.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 38.Commons' Journals,
Vol. xvii, p. 28,
23 January 1722.

Liverpool Writ.

New Writ for the Borough of Liverpool, in the County of Lancaster, in the room of Sir Thomas Johnson, Knight, who, since his Election for the said Borough, hath accepted the Office of Collector of the Customs in *Rappahannock River*, in *Virginia*.

Apparently not re-elected, *Beaton's Parliamentary Register*, I., p. 101.Commons' Journals,
Vol. xvii, p. 801,
10 May 1723.

Horsham Writ.

New Writ for the Borough of Horsham, in the County of Sussex, in the room of the Honourable Henry Ingram, Esquire, who, since his Election for the said Borough, hath accepted the Office of Commissary of the Stores and Provisions at *Gibraltar*.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 126.Commons' Journals,
Vol. xvi, p. 574,
23 May 1729.

Malton Writ.

New Writ for the Borough of Malton, in the County of York, in the room of the Honourable Henry Finch, Esquire, who, since his Election for the said Borough, hath accepted the Office of Receiver General and Collector of the Revenues in the Island of *Miscova*.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 246.

New

New Writ for the Borough of Horsham, in the County of Sussex, in the room of the Honourable Henry Ingram, Esquire, who, since his Election for the said Borough, hath accepted the Office of Commissary of His Majesty's Stores and Provisions in the Island of *Misorea*. Appendix, No. 4.

Commons' Journals,
Vol. xxvi, p. 482,
15 May 1785.
Horsham Writ.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 198.

New Writ for the Borough of Wendover, in the County of Bucks, in the room of John Hampden, Esquire, who, since his Election for the said Borough, hath accepted the Office of Commissary of His Majesty's Stores of War and Provisions for His Majesty's Forces at the Garrison of *Gibraltar*.

Commons' Journals,
Vol. xxvi, p. 489,
15 May 1785.
Wendover Writ.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 15.

New Writ for the Port of Hastings, in the County of Sussex, in the room of Andrew Stone, Esquire, who, since his Election for the said Port, hath accepted the Office of Secretary of the Island of *Barbadoes*.

Commons' Journals,
Vol. xxvi, p. 101,
1 April 1785.
Hastings Writ.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 242.

New Writ for the Borough of Truro, in the County of Cornwall, in the room of the Honourable Charles Hamilton, Esquire, who, since his Election for the said Borough, hath accepted the Office of Receiver General and Collector of the Revenues in the Island of *Misorea*.

Commons' Journals,
Vol. xxvi, p. 497,
22 December 1785.
Truro Writ.

15 Geo. II., c. 23, disabling Members holding any office, civil or military, at *Misorea* or *Gibraltar*.

New Writ for the Borough of North Allerton, in the County of York, in the room of William Smelt, Esquire, who, since his Election for the said Borough, hath accepted the Office of Receiver of His Majesty's casual Revenue in the Island of *Barbadoes*.

Commons' Journals,
Vol. xxvi, p. 895,
30 April 1785.
North Allerton Writ.

Apparently not re-elected, *Beaton's Parliamentary Register*, I., p. 250.

New Writ for the Borough of Ludgershall, in the County of Wilts, in the room of George Augustus Selwyn, Esquire, who, since his Election for the said Borough, hath accepted the Office or places of Chief Clerk, Register, and Sole Examiner in Chancery, in the Island of *Barbadoes*, in *America*, and of the Clerk of the Crown and Peace there.

Commons' Journals,
Vol. xxvi, p. 320,
11 January 1785.
Ludgershall Writ.

Re-elected under this Writ, *Beaton's Parliamentary Register*, I., p. 237.

New Writ for the City of Edinburgh, in the room of George Lind, Esquire, who, since his Election for the said City, hath accepted the Office of Conservator of the Privileges of the Scots Nation in the *Netherlands*, and Resident there for the Affairs of Scotland.

Commons' Journals,
Vol. xxvi, p. 185,
10 February 1785.

Not re-elected, *Beaton's Parliamentary Register*, II., p. 595.

New Writ for the Borough of Wilton, in the County of Wilts, in the room of the Honourable Nicholas Herbert, who, since his Election for the said Borough, hath accepted the Office of Secretary of the Island of *Jamaica*.

Commons' Journals,
Vol. xxvi, p. 5,
19 January 1785.
Wilton Writ.

Re-elected under this Writ, *Beaton's Parliamentary Register*, II., p. 282.

New Writ for the District of Burghs of Kinghorn, Dysart, Kirkcaldie, and Burntisland, in the room of James Townsend Oswald, Esquire, who, since his Election for the said District of Burghs, hath accepted the Office of Secretary for the *Leeward Islands*.

Commons' Journals,
Vol. xxvii, p. 458,
20 January 1772.
Kinghorn, &c. Writ.

Re-elected under this Writ, *Beaton's Parliamentary Register*, II., p. 404.

New Writ for the Borough of Bramber, in the County of Sussex, in the room of Daniel Paltanay, Esquire, who, since his Election for the said Borough, hath accepted the Office of Collector of the Customs in the Port of *Rosetta*, in the Island of *Dominica*.

Commons' Journals,
Vol. xlv, p. 5,
6 December 1785.
Bramber Writ.

Apparently not re-elected, *Beaton's Parliamentary Register*, II., p. 266.

New Writ for the Borough of Beidport, in the County of Dorset, in the room of James Watson, Esquire, who, since his Election for the said Borough, hath accepted the Office of one of His Majesty's Judges of the Supreme Court of Judicature at Fort William in *Bengal*.

Commons' Journals,
Vol. i, p. 350,
5 March 1785.
Beidport Writ.

Appendix, No. 4.

Commons' Journals,
Vol. II., p. 354,
30 July 1795.

Pitts House, &c. Writ.

Commons' Journals,
Vol. II., p. 357,
14 March 1805.

Ayrshire Writ.

Commons' Journals,
Vol. III., p. 335,
23 May 1806.

Cardiff Writ.

New Writ for the District of Burghs of Pittenween, Anstruther Wester, Anstruther Easter, Kilrenny, and Crail, in the room of John Anstruther, Esquire, who, since his Election for the said District of Burghs, hath accepted the Office of Chief Justice of the Supreme Court of Judicature at Calcutta.

New Writ for the Shire of Ayr in the room of William Fullerton, Esquire, he being one of the Commissioners for the Government of the Island of Trinidad.

New Writ for the Borough of Cathedlogh, in the room of Sir Charles Montagu Ormsby, who, since his Election for the said Borough, hath accepted the Office of Recorder of Prince of Wales' Island,

(B.)

REPORT from the SELECT COMMITTEE respecting MEMBERS accepting OFFICES ABROAD.

[Ordered, by The House of Commons, to be Printed, 2 June 1822.]

REPORT.

THE SELECT COMMITTEE appointed to examine the Matter of the Petitions of several Persons, being respectively Electors and Freemen of the ancient City and County of Canterbury, and of several Electors of the ancient City of Canterbury and County of the same City, resident in London and its vicinity (being a Committee chosen by the general Body, to watch over their interests), which were presented to The House upon the 18th day of March and the 16th day of April last, relating to the Seat of *Stephen Rumbold Lushington*, Esquire, and to search for Precedents in respect of Members of This House accepting Offices abroad, vacating their Seats, and to report the same, with their Observations thereupon, to The House;—Have examined into the Matters referred to them, and have agreed to the following REPORT:

THE FREEMEN of the city of Canterbury, whose petitions are referred to your Committee, complain of their being imperceptibly represented in Parliament, in consequence of Mr. Lushington, one of their Members, having left the country for India, where he has accepted and is now executing the duties of a Governor of Madras. In inquiring into the practice of the House in earlier times, it appears that more attention was then paid to enforcing the execution by Members of their paramount personal duty in Parliament; and it will be found in the subjoined extract from the Journals, that in a case in many respects corresponding with that of Mr. Lushington, the House ordered a new writ to issue in the place of Sir George Somers, appointed Governor of Virginia; and that they were induced so to do by reason of his being thereby rendered incapable of attending his duty in Parliament. The House at the same time, and upon the Report of the same Committee of Privileges, appears to have vacated the seat of another Member, in consequence of sickness and bodily infirmities. And though in modern times less strict attention has perhaps been paid to the enforcing the personal attendance of Members, the House cannot be considered to have relinquished in any degree its ancient and undoubted privileges.

In the case of Mr. Lushington, however, the attention of your Committee has, in the first place, been directed to the consideration, in how far it may have been more distinctly provided for by statute. They find that by the Act passed in the 6th of Queen Anne, chapter 7, no person having any office or place of profit under the Crown, created since the year 1705, was to be capable of being elected, or of sitting or voting as a Member of the House of Commons, in any Parliament to be summoned after the passing of that Act, and the same incapacity was extended to various offices specially described; among which is mentioned, "any Governor or Deputy Governor of any of the Plantations." The Act also provides, that if any Member of the House should accept of any office of profit from the Crown, his election should be void, but he was capable of being re-elected. It further provided, that if any person disabled by it, should be returned a Member, his election of return were void; and that if any person so disabled should presume to sit and vote, he should forfeit the sum of Five hundred pounds.

It appears to your Committee to be a subject of much doubt, whether these enactments apply to the case of any Governor of the Settlements of the *East India Company*. That they have not hitherto been considered to be so applicable, appears evident from the fact, that no persons accepting these offices have been found on that account to have vacated their seats; and that several persons having accepted such offices, had continued to be Members of Parliament, or had vacated their seats by the acceptance of the Chiltern Hundreds, as will be seen in the annexed Statement.

On the other hand, these offices, although originally appointed solely by the *East India Company*, have by subsequent Acts of Parliament been gradually drawn more and more within what may fairly be considered the spirit of these provisions of the Act of Anne, which seem more particularly directed to restrain in this respect the influence of the Crown. By the Charter Acts in 1793 and 1813, the positive right of the Crown to recall these Governors at pleasure, and the concurrent power of the Crown in their nomination, is established. The gradual increase of this power and influence may perhaps account for its not having attracted the attention of The House.

Your Committee venture to recommend, as the result of a full and attentive consideration of the whole of this case, that a Bill should be introduced, to provide that the Governors of the Presidencies or Settlements of the *East India Company* shall henceforth be considered as Governors within the intent and meaning of the Act of Anne; and that any persons hereafter appointed to hold the same, shall be declared incapable of being elected, or of sitting in Parliament.

APPENDIX.

STATEMENT.

	PLACE chosen for.	To what Office appointed.	DAYS of Appointment.	
Lord Clive - -	Shewsbury	Governor General	12 Mar. 1764	No writ. Parliament dissolved 12 March 1768.
Lord Pigot - -	Bridgnorth	Governor of Madras.	1 Mar. 1773	No new writ till his death, in 4 February 1778.
Lord Macartney -	Beeston -	- ditto - -	14 Dec. 1780	New writ. Steward of East Hendred, 6 February 1781.
Lord Hobart - -	Lincoln -	- ditto - -	23 Oct. 1793	No new writ. Parliament dissolved 30 May 1794.
Lord W. C. Bentinck	Nottinghamshire.	- ditto - -	17 Nov. 1803	New writ. Steward of Chiltern Hundreds.
Sir E. Napier -	Boldport -	Governor of Bombay.	7 Jan. 1812	No new writ. Parliament dissolved 29 September 1813.
Right Hon. G. Canning.	Liverpool -	Governor General	27 Mar. 1822	No new writ. Declined appointment.

EXTRACTS from the Journals.

Die Saturai, 8th November, 1695.

9 Jan. 1, 1696.

THE Names of the Committee for Returns and Privileges read; and they retire into the Committee Chamber; and, returning to the House, make Report by Sir Geo. Moore.

Cases Four:

1. *Lyve Regis*:—The Burgess *Hassard* not able to serve by Reason of the Gout.—He came into them, walked in Four only.—*Resolved*, That he should serve still.

Week, and not able to serve, by Reason of Age, and not likely to recover:—*Resolved*, for *Culver* in *Wiltshire*:—To be removed.

Serjeant *Swigg*.

Lord Chief Baron, } Attendants as Judges in the Higher House:—

Not to serve here.—If a Serjeant, to serve here.

Sir *Henry Cope*, Captive:—To stand still as a Burgess.

Q. Whether *Hassard* shall stand, and serve?—*Resolved*, He shall not be removed.

Q. Whether *Swaddon*, for *Culver*, shall be removed?—*Resolved*, He shall, and a new Writ to issue.

Q. Touching Lord Chief Baron, Burgess for *South*, and Baron *Swigg* for *Bristol*, being Attendants as Judges in the Higher House, whether they shall be recalled?—*Resolved*, They shall not.

Q. Touching Sir *Henry Cope*, Captive, not to be removed:—*Resolved*.

Moved, That divers in *Cambrid* have resigned their Places, and new elected.

Touching Sir *James Lee*:—The Committees to consider of it.

Die Saturai, 22nd November, 1696.

4 Jan. 1, 1696.

Sir Geo. Moore reporteth the Proceeding of the Committee, touching the Supply of Places of Knights and Burgesses in the House.

They considered, according to the Instructions given them; namely, of Sir *Thos. Ridgway*, Treasurer, Sir *Hansfry Winch*, Lord Chief Baron, and Sir *Oliver St. John*, Master of the Ordnance in *Ireland*; whose Cases, they conceived, differed from the Case of Ambassadors; for that (as they thought) their Patents were *in Lise*, and therefore new to be chosen in their Places. The late Precedent of Sir *James Lee*, advanced to the Place of Lord Chief Justice in *Ireland*, remembered; in whose Place Mr. *Alexander Shack* was chosen for the Town of *Wentbury* in *Wilt*.

Touching Sir *Henry Hobart*, advanced by his Majesty to the Place of Attorney-general, it was remembered, that in 8th *Eliz.* Mr. *Onslow*, Solicitor, being called by Writ into the Higher House, was afterwards chosen Speaker by this House; Mr. *Jeffreys* also, the Queen's Serjeant, was demanded by this House to do Service here. Many Precedents of the King's Serjeant and Solicitor, none for the Attorney; *sed casus ratio*.

Several Questions were made of every particular Case; and it was resolved, That Warrants should be granted by Mr. Speaker for the Choice of New Members in the Place of Sir *Thomas Ridgway*, Sir *Hansfry Winch*, and Sir *Oliver St. John*, according to the Opinion of the Committee, and according to former Precedent in the Case of Sir *James Lee*.

Question was made, touching Sir *Charles Cornwallis* in *Spain*, Sir *Geo. Carew* in *France*, and Sir *Tho. Edmonds* with the Arch-duke, Legier Ambassadors; and, upon Question, adjudged they should still stand in their several Places.

Touching Mr. Attorney, it was much disputed, what should be the Question; at last the Question agreed, and so made:

Q. Whether he should be recalled, admitting, that he was already called by Writ of Attendance into the Higher House, as the House conceived he was.

Upon this question the House was not satisfied, but would have it made, Whether a new Choice.

The House upon this grew to Division, and by Division to Confusion; for they were not numbered; nor One Part well understanding another, they settled again, and made a new Question; *viz.*

Q. Whether a Question should be made of it: And by Voice over-ruled, that no Question should be made of it, but the Matter should rest; and so was understood, and left at that Time.

Order, That Warrants should issue for new Writs, to elect for Places void; as in Place of Sir *Thos. Ridgway*, for the County of *Devon*, in this Form:

WHEREAS Sir *Thos. Ridgway*, Knight, now Treasurer at War, in his Majesty's Realm of *Ireland*, was, at the first Session of this Parliament, elected, and returned unto the Commons House of Parliament, One of the Knights of the Shire for the County of *Devon*; and being sithence, by his Majesty's Favour, advanced to the Place of Treasurer; it was this Day moved in the said House, whether his Place of Knight of the Shire

Shire were void; which, upon the Question, was overruled; and ordered, that a new Writ should issue for the Choice of another Knight, in the Room and Place of the said Sir Thomas: For which this shall be your Warrant. Appendix, No. 4.

Directed:

"To my loving Friend Sir Geo. Osborn Knight, Clerk of the Crown in his Majesty's High Court of Chancery."

And so for the rest in the like Form.

Die Mercurii, 14th Februarii, 1699.

Sir Geo. Moore maketh Report of the Committee for Privileges.—

Privileges and Liberties must live when we are dead.—

Thirty dead and removed:—Twenty-four dead.—

Lord Walden, Lord Chisou, removed to the Upper House.—

Mr. Boyser, by Patent,—Oath,—necessary Attendance.—Not to understand our Secrets.—

Mr. Bromley, a Baron of the Exchequer.—

Toby Matthews, by Act of Council banished upon Direction from his Majesty.—Not to return till his Majesty's Pleasure be known.—Opinion of the Committee, that a Warrant from hence.—The Judgment of the House, whether to be removed.—

Sir Geo. Sommers.—Opinion, not to be removed.—Case of Ambassadors:—Disgrace:—Injustice.—If he return, and challenge Privilege, upon Arrest, to be granted; therefore.—

Haward.—89.—incurable.—bedrid.—A new Writ.

Sir Geo. Moore:—That Sir Geo. Sommers not to be removed.—No Disgrace, but a Grace, to be a Governor in Virginia.—No Injustice:—But Injustice to the Town, and to this House:—Not to chuse.—

Sir Rob. Wrottesley's Man (*Stolley*) to have Privilege.—

Not to spend Time, but to enter into the Business, for which his Majesty hath called; the Country hath sent us.—

A Writ within the Sixteen Days for Baron Bransley—from the Lord Chancellor good Sixteen Days:—Only good for Arrest.

A new Writ for Toby Matthews.

A new Writ for Haward.

Sir Geo. Sommers like to Sir Jo. Lee in Ireland.

Sir Tho. Hakroft,—for his Removal.

Sir Henry Sandys:—Answer the Objections.—Disgrace.—Comparison with Ambassadors.—Some Prejudice to the House.—To remove, without Precedent.—

Three Causes of Remove:—1. Disgrace. 2. Grace. 3. Sickness incurable.—

Case of Ambassadors.—Three Differences:—That, foreign; this, home:—No Magistocracy; this Magistocracy:—This, with a Purpose of Continuance; that, not to continue long:—Presumed for his Life.—

A new Precedent: Done upon Deliberation.

Sir Math. Bacon:—Not to be removed.

Mr. Fuller:—The End of Parliaments, to have Men present that do represent.

Q. Whether a Warrant for Sir Geo. Sommers:—A new to be elected.

Appendix, No. 5.

MEMORANDUM handed in by Mr. ATTORNEY GENERAL for IRELAND.

Appendix, No. 6.

THE Act of Union (39 & 40 Geo. 3, c. 67) having created a new Parliament for the United Kingdom, it became necessary to regulate by statute its constitution, and to define (*inter alia*) what offices were a disqualification for membership. The Parliament of the United Kingdom dates from 1800; the former statutes defining the position of Members of the separate Parliaments had ceased to be applicable to the altered circumstances, and new provisions had to be made in this particular; accordingly, by 41 Geo. 3, c. 52 (U.K.), "An Act for the declaring what Persons shall be Disabled from Sitting and Voting in the House of Commons of the United Kingdom of Great Britain and Ireland, &c.," all persons were disabled from sitting in the United Parliament,—

- Sect. 1. i. For any place in Great Britain, who would have been disabled from sitting in the Parliament of Great Britain:
- Sect. 2. ii. For any place in Ireland, who would have been disabled from sitting in the Irish Parliament:

Sect. 3. A proviso was added that nothing therein contained should be construed to enable persons theretofore disabled from sitting and voting in the House of Commons of Great Britain, to sit or vote in the House of Commons of the United Kingdom as Members for any place in Ireland, and vice versa.

This describes the disqualification by reference to the previously existing law for the separate Parliaments, to which it is accordingly necessary to refer.

The rule for the Parliament of Great Britain was laid down by 6 Anne, c. 7:

- Sect. 25. "That no person who shall have any *new* office or place of profit whatsoever under the Crown, nor any person who shall be a Commissioner, &c. [specifying certain existing offices], nor any person having any pension from the Crown during pleasure, shall be capable of being elected, or of sitting or voting as a Member of the House of Commons in any Parliament which shall be hereafter summoned and holden."

Sect. 26. And also:—

"If any person being chosen a Member of the House of Commons shall accept of any office of profit from the Crown during such time as he shall continue a Member, his election shall be void, and a new writ shall issue for a new election, as if such person was dead. Provided, nevertheless, that such person shall be capable of being again elected."

It will thus be seen that the holding of a new office, *i.e.*, one created since 26th October 1705, is an absolute disqualification for Parliament; and that the acceptance of an *old* office vacates the seat, although not a bar to re-election.

The wording of these two sections differs materially in another particular; the former applies to places of profit under the Crown, the latter is limited to acceptance, &c., from the Crown. The consequence of this is, that where the office is a new one, the Committee have not deemed it necessary to inquire whether it was held under the Crown, or accepted from the Crown; but where the office is an old one the inquiry becomes material. See the case of Mr. Walpole, who did not vacate his seat on appointment as "Clerk of the Pells" (an old office), because he was appointed to it by the Treasurer of the Exchequer [Rogers, p. 258; Hatsell, Vol. II., p. 5]. In the case of Mr. Harvey, appointed Registrar of Hackney Coaches, the Select Committee reported that the office was a new one, and that by his acceptance of it Mr. Harvey had vacated his seat. The appointment in this case was voted, not in the Crown, but in the House Secretary, 1 & 2 Vict. c. 79, s. 4; 94 Com. Jour. 48.

In the Frome case, 16 Com. Jour. 455, the Secretary of the Order of St. Patrick was declared incapable of being elected as holding a new place of profit under the Crown.

In the Cambridge case (1868), Mr. Forsyth's return was avoided, he being Standing Counsel to the Secretary of State for India since the Government of India Act. Under that Act, Section 15, a scheme of the permanent House establishment had to be submitted to the Queen in Council; Mr. Forsyth's name was included in the scheme submitted and approved by Her Majesty, with a fixed salary, in addition to fees, placed opposite to it. Although there was an almost identical office of Standing Counsel to the East India Company, this was held to be a new place of profit under the Crown, and Mr. Forsyth's election consequently void. An Act to indemnify Mr. Forsyth (29 & 30 Vict. c. 20) was subsequently passed.

A number of offices are expressly made disqualifications by various statutes; for list, see Rogers, p. 248; but they do not seem to affect the question of the Clare election.

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In fact, there is no exact precedent for it. *Huskisson's case* (Row's Law of Elections, I., Appendix, No. 5, 195) approaches most nearly to it (see Appendix to this Paper).

In *Chambers on Elections* (p. 421), under the heading of "Offices held to vacate Seats," there is a long list comprising offices purporting to be of Barbadoes, Virginia, Dominica, Gibraltar, Tobago, Jamaica, Leeward Islands, &c., but nothing is stated as to their nature, tenure, or mode of appointment.

The law which existed before the Union in Ireland, with reference to the Irish Parliament, was closely analogous to that of England.

33 Geo. 3, c. 41 (I.). "An Act for securing the Freedom and Independence of the House of Commons by excluding therefrom Persons holding any Offices under the Crown to be hereafter created, or holding certain Offices herein enumerated, or Pensions for Term of Years, or during his Majesty's Pleasure," enacts that—

"No person who shall have any office or place of profit under the Crown at any time after the passing of this Act, created or erected . . . shall be capable of being elected a Member of the House of Commons in this present Parliament, or of being elected, or of sitting and voting as a Member of the House of Commons in any Parliament which shall be hereafter summoned and holden."

Sect. 3.

And Section 4 of this Act is identical with Section 26 of the English Act.

The Irish Parliamentary Constitution was thus almost identical with that of England, one important fact, i. e., the existence of the Lord Lieutenant having been overlooked. This oversight was remedied by 38 Geo. 3, c. 36 (I.), which enacted that persons accepting offices from the Lord Lieutenant should vacate their seats, but be eligible for re-election. It is clear that this can only apply to old offices, for it is in terms an amendment of Section 4 of the previous Act, and further illustrates the distinction between offices held under the Crown, and accepted from it. This Act only dealt with the latter class of offices.

The 5th Section of 41 Geo. 3 (U.K.), c. 53, deals with the other class of offices (those held under the Crown), and provides that after the dissolution of the existing Parliament no person holding any office or place of profit from or by the nomination or appointment or by any appointment subject to the approbation of the Lord Lieutenant, created after 33 Geo. 3, shall be capable of being elected or of sitting or voting in any future Parliament. This seems to prove that an office from the Lord Lieutenant was considered as not necessarily an office under the Crown.

Section 9 of the same Act provides "that if any person being chosen a Member of the House of Commons shall, from and after the passing of this Act, accept of any office of profit whatever, immediately and directly from the Crown of the said United Kingdom, or by the nomination or appointment, or by any other appointment subject to the approbation of the Lord Lieutenant . . . his seat shall thereupon become vacant, and a writ shall issue for a new election: provided nevertheless, that such person (if he be not incapacitated by anything hereinbefore contained) shall be capable of being again elected to be a Member of the House of Commons for the place for which he had been a Member, or for any other place sending Members to the House of Commons."

The Act called the Victoria Constitution Act, which is of great importance in the consideration of this question, is printed at length in the Imperial Statutes as a Schedule to 18 & 19 Vict. c. 55, and by that Act a civil list is payable to Her Majesty in lieu of Crown Revenues, and appropriated by Schedule D, to certain purposes, among which the salary of the Attorney-General is included. No change can be made in this appropriation without the assent of an absolute majority of the whole number of members of the Legislative Council and of the Legislative Assembly of Victoria, and every such measure has to be reserved for the signification of Her Majesty's pleasure. The Constitution Act also prescribes the following as the form of the Oath of Allegiance to be taken by the Governor and all persons holding any office of trust or profit under him:—

"I do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Colony of Victoria."

The Act of the Colony of Victoria, 23 Vict., No. 91, is entitled "An Act to limit the Number of Persons holding Office under the Crown who may sit and vote in the Legislative Council and Assembly of Victoria." The 3rd Section of this Act specifies the Attorney-General as one of the persons affected thereby; and Section 5 provides, following the English precedent, that if any Member shall accept any office or place of profit under the Crown his seat shall be vacant.

The question whether Sir B. O'Leighen has vacated his seat seems to depend entirely on this further question: Is the Attorney-Generalship of Victoria (1) a place of profit (2) under the Crown?

The office is undoubtedly a new one within the meaning of the Statute of the Irish Parliament, 33 Geo. 3, and therefore it is, if a place of profit, and if held under the Crown, a continuing disqualification for a seat in Parliament. It is unnecessary to consider whether acceptance of an office after the return has been made, but before the person elected takes the oath and his seat, avoids the election; for, in this case, if the office is one held "under the Crown," it absolutely disqualifies the holder from being a Member of the House of Commons.

Appendix, No. 5.

The question whether the Attorney Generalship of Victoria is a place of profit under the Crown must depend, in great measure, on the terms and manner of his appointment. If it is not held under the Crown the election stands good; if it is, this further question arises, Is the office a place of profit? The Act 41 Geo. 3, c. 52, sect. 5, places a difficulty in the way of holding it to be an office under the Crown, for, as we have seen, that section expressly disqualifies persons accepting new offices from the Lord Lieutenant, implying, that except for its provisions, such persons would not be disqualified under the general law as holding office under the Crown; that, in fact, the office must be held directly under the Crown and not under a delegated authority.

It is possible, however, that this section may have been inserted by way of additional precaution, and not because there was any reasonable doubt as to the interpretation to be put on the words, "place of profit under the Crown;" or, possibly, the full meaning of the difference between "under the Crown" and "from the Crown" was not appreciated, and the draftsman may have thought that as it was necessary to specify the Lord Lieutenant in the one case, it was equally so in the other. The subject is one on which Parliament always seems to have preferred express and specific exclusion to reliance on the general law; and in recent times, whenever offices have been created, there has generally been inserted an express disqualification clause. For example, the Commissioners of Public Works in Ireland were, by 1 & 2 Will. 4, c. 33, sect. 5, to be appointed under the Sign Manual, yet it was thought necessary by Section 11 to render them incapable of being elected Members of the House of Commons. Other instances of needless caution are to be found in the cases of "The Collector General of Rates" (12 & 13 Vict. c. 91); "The Commissioners of Woods and Forests" (14 & 15 Vict. c. 42); "The Commissioners for Sale of Incumbered Estates in the West Indies" (17 & 18 Vict. c. 117); "The Commissioners of Irish Church Temporalities" (32 & 33 Vict. c. 42).

It is obviously important to decide whether the 5th Section should be regarded as a declaration of existing law, or as a necessary amendment of the law then introduced for the first time.

APPENDIX.

CASE of Mr. HUSKISSON, Member for *Liskeard*, petitioned against on the ground of his holding the OFFICE of AGENT for the Island of Ceylon.

COMMITTEE appointed 17th February 1867, consisting of—

JOHN KYNASTON POWELL, Esq. (Chairman).

Sir Charles Morice Pole, Bart.
Sir Charles Morgan, Bart.
Edward Berkeley Portman, Esq.
John Maitland, Esq.
Michael Symce, Esq.
Joseph Cripps, Esq.
John Hodgson, Esq.

Edward Leveson Gower, Esq.
John T. P. B. Trevelyan, Esq.
Richard Long, Esq.
Charles Edmonstone, Esq.
Robert Haldane Bradshaw, Esq.
Thomas Crocsey, Esq.
The Rt. Hon. Charles Long } Nominees.

Petitioners.—Nicholas Tomlinson and Alexander Nowell, Esquires.

Sitting Members.—The Honourable William Elliot and William Huskisson, Esq.

The Petition of Mr. Tomlinson and Mr. Nowell (which had been presented 31st December 1866), after stating that they, as well as Mr. Elliot and Mr. Huskisson, were candidates, and that they, the said Mr. Tomlinson and Mr. Nowell, ought to have been returned, as having the legal majority, alleged (amongst other things) that Mr. Huskisson was, at the time of such election, such a pensioner or placeman under the Crown and Government as is disqualified to sit as a Member in the House.

The only allegation which it was seriously attempted to substantiate was that which aimed at the disqualification of Mr. Huskisson by reason of his holding a new office within the meaning of the Statute, 6 Anne, c. 7, s. 25, with respect to which the case made on the part of the petitioners rested on the following grounds:—

The office in question was that of agent for the island of Ceylon, with a salary of 800 l. per annum.

There was no doubt of the office being a new one, created since the 25th October 1705. It was also contended to be an office of profit from the Crown, and that upon the facts proved before the Committee it was sufficiently shown that Mr. Huskisson was in possession of the office.

With

With respect to the office, it appeared that the appointment is made by the Governor of Ceylon, or the Governor and Council there (it was not spoken to with certainty which); and that the nomination takes place, upon a letter from the Secretary of State for the War and Colonial Department, recommending the person to be named. It further appeared that there had been instances in some of the colonies, but not in Ceylon, wherein such recommendations had not been attended to by the Governors, and other persons had been appointed instead of the persons so recommended.

The agent is paid out of the revenues of the colony. It was not distinctly stated from what source, in the event of a deficiency of the revenue of the island, his pay would be made up, whether by the Crown or by the East India Company. With respect to Mr. Huskisson's appointment, it was in evidence that a letter, bearing date 2nd February 1806, had been transmitted by Mr. Windham, as Secretary of State, to General Maitland, the Governor of Ceylon, requesting him to cause the name of Mr. Huskisson to be placed on the list of the Civil Establishment of the island, as colonial agent.

To this letter no answer had been received at the time of the trial of the petition; so that whether the above letter from the Secretary of State had or had not been followed by the appointment of Mr. Huskisson to the office, could not be sufficiently shown, though there was every reason to suppose it would have been attended to; and that Mr. Huskisson had, in fact, acted upon such supposition, having done some official acts.

Under the above circumstances, the Committee, on the 19th February, resolved, that Mr. Huskisson was duly elected. They also resolved, that the petition against him was not frivolous or vexatious. With respect to Mr. Elliot, against whom no evidence was offered, they resolved that he was duly elected; and that the petition against his election was frivolous and vexatious.—[62 Jour. 27, 139, 140.]

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